1624.

SUPREME COURT OF THE UNITED STATES.

No. 163.

THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY, CLAIMANTS OF THE STEAMSHIP "PACIFIC," HER TACKLE, &c., APP'TS,

vs.

OTIS P. RUMBALL, LIBELLANT.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

[SEAL.]

KENNETH G. WHITE, *Clerk.*

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, George W. Morton, clerk of the district court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this eighth day of September, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the said United States the seventy-ninth.

[L. S.]

GEO. F. BETTS, *Clerk.*

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday the eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable , an associate justice of the Supreme Court of the United States.

OTIS P. RUMBALL
vs.
THE STEAMSHIP PACIFIC, her machinery, tackle, &c.

1851, Sep. 24th. The libellant files his libel in the words and figures following, to wit:

[REC. CLXIII, D. T., 1857.]—1

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York.

The libel of Otis P. Rumball, late master of the brig called the , formerly of Harrington, in the State of Maine, in behalf of himself and the other owners of the said brig, against the steamship Pacific, her machinery, tackle, apparel, and other furniture, and against all persons lawfully intervening for their interest therein in a cause of collision, civil and maritime, alleges as follows:

First. That your libellant, before and at the time of the collision hereinafter in the second article mentioned, was the master, agent, and part owner of the brig "Alfaretta," her tackle, apparel, and other furniture, of the burden of one hundred and sixty-three tons, or thereabouts, which brig sailed from Millbridge, in the State of Maine, on or about the tenth day of August last, with a cargo of lumber on board on freight, bound on a voyage to the port of New York.

Second. That between the hours of nine and ten o'clock, on the evening of the sixteenth day of August last, or about that time, while the said brig was proceeding on her said voyage with a light wind from southwest by west off the southerly shore of Long Island, the said brig steering northwest by west by the wind, with all sails set, and the said island being from fifteen to twenty miles distant, or thereabouts, on the starboard bow, the libellant and the watch and crew on board said brig observed lights bearing from them about west half south, which they judged to be the lights of a steamer, and the libellant immediately caused a light to be hoisted in the fore-rigging of said brig. That the strange vessel, which proved to be the steamship Pacific, had such a large number of lights that the libellant was not able to judge as to the direction she was steering, and he kept the brig in her said course, without deviation, until the collision hereinafter mentioned. That in about fifteen minutes after the libellant had so caused the said light to be hoisted in the fore-rigging, the said steamship with great force and violence ran into and struck the brig on her larboard bow, cutting her down to the water, and carrying away the foremast, so that the brig began to fill immediately, and filled in a few minutes, and became a complete wreck. That, thereupon, the master of the Pacific sent his boats and took off the master, mate, and crew of said brig, who there necessarily abandoned her, and the said steamship then proceeded with them to the port of Liverpool.

Third. That the said steamship, at the time mentioned in the second article, was on her passage from New York to Liverpool; that she was under a head of sail, and her machinery and wheels were in motion, carrying her through the water, as nearly as could be judged, at the rate of from twelve to fourteen knots per hour, and the speed of said steamship was not slackened, and the ma-

chinery was not stopped until at or just about the instant of her striking said brig.

Fourth. That the said brig, at and immediately before the time she was so run into by the said steamship, was pursuing her voyage lawfully, and was properly steered and navigated; that the said master of said brig, and her officer and crew, were not chargeable with any neglect, omission, default, or want of skill, and the running of said steamship into the said brig was caused by want of due care on the part of her master, officers, and crew, or some of them, and by the negligence, inattention, and default of them, or some of them; that the look-out of the said steamship might have seen, and, as the libellant is informed, did in fact see and report the light of the said brig, at or about fifteen minutes before the said collision; that the night was not unusually dark, and the atmosphere was not thick, and an experienced and careful watch on board the said steamship would certainly have observed the said brig in time to have avoided contact with her; nevertheless the speed of the said steamship was not diminished, and her course was not so changed as to avoid striking the said brig, which might easily have been done.

Fifth. That at the several times in this libel mentioned, the said brig was tight, staunch, and strong, and in every respect well manned, tackled, apparelled, and appointed, and with a competent and sufficient master and crew on board of her, all of whom were properly engaged in the navigation and protection of said brig, and she, with her tackle, apparel, and furniture, and the freight on board, was totally wrecked by means of her being run into as above mentioned, and wholly lost to the libellant and owners, excepting that the sum of about four hundred dollars was received by the said owners, as alleged in the sixth article.

Sixth. That after the libellant and the crew of said brig had abandoned her at sea, she was brought into the port of New York by sailors and sold, upon which sale she produced the sum of nine hundred dollars, of which the owners received about four hundred dollars, and the balance was properly and fairly awarded to the sailors for salvage and expenses.

Seventh. That the value of said brig, her tackle, apparel, and furniture, including her charts and nautical instruments, was, at the several times above mentioned, of the value of six thousand seven hundred dollars, and at the time of her said abandonment the freight of the said brig, then on board, was of the value of four hundred dollars, and these libellants and said owners have suffered damages, by means of the premises, in the amount of six thousand seven hundred dollars.

Eighth. That the said steamship Pacific has returned to and is now lying in the port of New York, and is about to proceed to sea; that the libellant has demanded payment of said damages from the

agent of said steamship, but payment thereof has been wholly refused.

Ninth. That all and singular the premises are true and within the admiralty and maritime jurrisdiction of the United States, and of this honorable court; wherefore this libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction may issue against the steamship Pacific, her machinery, tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages aforesaid, and that the said steamship may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

OTIS P. RUMBALL.

WEEKS & DE FOREST,
Libellant's Proctors.
H. G. DE FOREST,
Advocate.

Subscribed and sworn to this 24th day of September, 1851, before me.

GEO. W. MORTON,
U. S. Comm'r.

Endorsed: 9,371. U. S. district court, south dis't N. Y.
Otis P. Rumball vs. The Steamship "Pacific," her machinery, tackle, &c. Libel.

WEEKS & DE FOREST,
Proctors.

Filed Sep. 24th, 1851.

District Court of the United States for the southern district of New York.

Filed the 24th day of September, 1851.

Stipulation for Libellant's costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 24th day of September, in the year of our Lord one thousand eight hundred and fifty one, by Otis P. Rumball, against the steamship Pacific, her machinery, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamship, her tackle, &c., may be condemned and sold to pay the demands of the libellant, and the said libellant and Charles L. Vose and Henry G. De Forest, sureties, and the said libellant and parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his sureties, execution may issue against

their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

OTIS P. RUMBALL,
CHARLES L. VOSE,
H. G. DE FOREST.

Taken and acknowledged this 24th day of September, 1851, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Charles L. Vose and Henry G. De Forest, parties to the above stipulation, being duly sworn, doth depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

CHARLES L. VOSE,
H. G. DE FOREST.

Sworn to this 24th day of September, 1851, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the day of , 185 .

U. S. District Court.

OTIS P. RUMBALL
vs.
THE STEAMSHIP "PACIFIC," her tackle, &c.

I hereby consent to waive issuing process of attachment against the steamship Pacific, her tackle, &c., provided the claimants execute stipulations for costs and value, the latter in the sum of seven thousand dollars; the sureties to justify before the commissioner, and the claimants paying into court the costs of the clerk on stipulating and further consenting to appear and answer the libel on file on or before the first Tuesday of October next, and failing so to do, the defaults to be entered; the stipulation for value to represent the vessel.

New York, Sept. 24, 1851.

WEEKS & DE FOREST,
Pr's for Libel't.

I hereby consent to appear for the claimants, and that an order be entered pursuant to the terms of above consent.

E. H. OWEN,
Proctor for Claimants.

Endorsed: 9,371. U. S. district court. Otis P. Rumball vs. the Steamship Pacific, &c. Consent to stipulate.

WEEKS & DE FOREST,
Liblt's Proctors.

Filed Sept. 24, 1851.

District Court of the United States for the southern district of New York.—In Admiralty.

Filed the 24th day of September, 1851.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and fifty-one, by Otis P. Rumball against the steamship Pacific, her machinery, tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the parties in interest have consented to waive the issuing of process on the plaintiff's executing stipulations for costs and value, in lieu of the said steamship, her tackle, &c., being in the custody of the marshal under the process to be issued in pursuance of the prayer of said libel, and by a consent signed by the proctors for the libellants, the said stipulation for value is to be in the sum of seven thousand dollars, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the or suret , execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court, to which the above named suit may proceed, and upon notice of such order or decree to E. H. Owen, esquire, proctor for the claimants of said steamship, her tackle, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

For the New York & Liverpool U. S. Mail Steamship Co.
EDW'D K. COLLINS, *Agent.*
EDW'D K. COLLINS.

Taken and acknowledged this 24th day of September, 1851, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Edward K. Collins, party to the above stipulation, being duly sworn, depose and say, that he is worth the sum of fourteen thousand dollars over and above all his just debts and liabilities.

EDW'D K. COLLINS.

Sworn to this 24th day of September, 1851, before me.

GEO. W. MORTON,
U. S. Commissioner.

1851, October 14th. The claimants file their answer in the words and figures following, to wit:

U. S. District Court.

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

And now the New York and Liverpool United States Mail Steamship Company come here into this honorable court, and for claim and answer to the libel and complaint of Otis P. Rumball, late master of the brig Alferetta, in behalf of himself and the owners of the said brig, against the steamship Pacific, her machinery, tackle, apparel, and other furniture, and against all persons lawfully intervening for their interests therein in a cause of collision, civil and maritime, allege and propound as follows, viz:

First. That these respondents are, and at the several times in the libel alleged were the sole owners of the aforesaid steamship "Pacific," her machinery, tackle, apparel, and other furniture, and have a right to intervene for their interest therein in this court.

Second. These respondents, from information and belief, deny that the steamship Pacific had, at the time in the second article of the libel referred to, such a large number of lights that the libellant was not able to judge as to the direction she was steering, or that the brig kept in her course without deviation until the collision hereinafter mentioned occurred, or that the said steamship ran into or struck the brig at the time and in the manner in the libel alleged or otherwise, except as hereafter particularly stated. These respondents say that they are ignorant, and cannot answer the several other matters contained in the second article of the said libel; but they do not admit the same, except that it is true that after the collision the master of the Pacific sent and took off the crew of the brig, who abandoned her; but whether or not such abandonment was necessary, these respondents are ignorant, and cannot say.

Third. These respondents, further answering in respect to the said collision, say that the said steamship Pacific, with her passengers and a large and valuable cargo of merchandise and the United States mail, departed from the port of New York, under the command of Ezra Nye, on or about the 17th day of August, 1851, and

proceeded upon her intended voyage to Liverpool, being at the time well and sufficiently manned, provisioned, and equipped for the voyage, and in every respect seaworthy. That afterwards, while proceeding upon the aforesaid voyage, and between 7 and 8 o'clock p. m. of the day last aforesaid, the weather being cloudy and the night dark, the wind southwest by south, the Pacific steering east half south, with her usual lights displayed—that is to say, a green light on the starboard and a red light on the port paddle-box, and a bright light on the foremast head—the look-out, who was stationed in the forecastle of the Pacific, discovered the light of a vessel about two and a half points on the starboard bow; whereupon the helm of the Pacific was immediately put to starboard, and she at once swung off to east-northeast, and at or about the same time her engines were stopped. That the vessel so discovered was the aforesaid brig, and was, at the time, close hauled on the wind, steering to the westward in a course nearly parallel to the steamer; but, instead of keeping her course, as she could and should have done, without changing, she suddenly and unexpectedly put her helm , kept off, and came with her bows on to the steamer, striking the steamer a little forward of her starboard wheel, and thereupon the said wheel passed over her bows and cut her down, thereby damaging the said steamer to a large amount—that is to say, to the amount of two thousand dollars; and it then and there became and was necessary for the said steamer to lie to a number of hours to make such temporary repairs as were necessary, and she was obliged from time to time, upon the said passage, to make further temporary repairs, and was thereby delayed in her passage.

Fourth. These respondents, from information and belief, deny that the speed of the said steamer was not slackened nor her machinery stopped until at or just about the instant of the collision, as alleged in the second article of the libel; but if otherwise, still these respondents say, that if the brig had kept her course it would not have been necessary, to avoid the collision, to have either slackened the speed or to have stopped the machinery of the steamer; and it was not until the brig improperly changed her course, that such slacking of speed or stopping of the machinery became necessary, and they deny that there was any negligence or want of care on the part of the steamer in this respect.

Fifth. That the collision aforesaid was, as the respondents are informed and believe, caused by the carelessness, negligence, and improper attention and unseamanlike conduct of those navigating and having charge of the said brig, and not by or through any neglect, omission, inattention, or improper act of those navigating and having charge of the said steamer; that everything was done, by and on the part of the steamer, which could have been to avoid the collision, and if the said brig had kept her course, and had not put her helm to port, such collision would have been avoided; but by the sudden, unexpected, and improper changing of her course

as aforesaid, it was impossible for the steamer to get out of her way, and the collision was inevitable.

These respondents, from information and belief, deny each and every allegation contained in the fourth article of the libel.

Sixth. These respondents further answering, say, that they have no knowledge respecting the matters contained in the fifth, sixth, seventh, and eighth articles of the said libel, and do not admit the same, or any or either of them, but leave the libellant to make such proof thereof as he may be advised.

Seventh. That all and singular the matters in this answer set forth are true; in verification whereof, if denied, these respondents pray leave to refer to the depositions and proofs to be by them exhibited.

Wherefore they pray that the libel may be dismissed with costs, and that such decree may be made herein as shall be agreeable to equity.

EDW'D K. COLLINS.

Sworn to this 13th day of October, 1851, before me.

J. BRIDGHAM,
U. S. Comm'r.

Endorsed: 9,371. U. S. district court. The Steamship Pacific, her engines, &c., ads. Otis P. Rumball. Answer.

E. H. OWEN, *Proctor.*

Filed Oct'r 14, 1851.

1851, Oct. 27. The libellants file their replication, as follows:

U. S. District Court—in Admiralty.

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The replication of Otis P. Rumball, libellant, to the answer of the steamship Pacific, her machinery, &c., and the New York and Liverpool United States Mail Steamship Company, respondents, alleges, that the libellant will aver, maintain, and prove his libel to be true, certain, and sufficient; and that the said answer of said respondents is uncertain, untrue, and insufficient; and he humbly prays, as in and by his said libel he has already prayed.

New York, Oct. 25, 1851.

WEEKS & DE FOREST,
Libellant's Proctors.

Endorsed: 9,371. U. S. district court. Otis P. Rumball vs. The Steamship Pacific, her machinery, &c., and others. Replication.

WEEKS & DE FOREST,
Libellant's Proctors.

Filed Oct'r 27th, 1851.

Monday, September 19th, 1853.

OTIS P. RUMBALL, for self and others, owners of Brig Alfaretta,
vs.
THE STEAMSHIP PACIFIC, her tackle, &c.
} Collision, August 16, 1851.—9,371.

WEEKS & DE FOREST, *For Libl't.*
E. C. BENEDICT, *Of Counsel.*
E. H. OWEN, *for Claimants.*
G. F. BETTS, *of Counsel.*

THE N. Y. AND LIVERPOOL U. S. MAIL STEAMSHIP COMPANY
vs.
NOYES WILSON.
} 9,370.

Same counsel, transposed.

These causes being called in their order on the calendar, on motion of the proctors for the respective parties, it is ordered that they be heard together.

Evidence for libellant Rumball and respondent Wilson.

Deposition of Daniel T. Wilson read—seaman, mate of brig—wind S. S. W.; course of brig N. W. by W.
" " John McMahon, seaman.
" " Calvin Coffin, seaman.
" " Laurell Cook, cook on brig. Headed N. W. by W., on wind—

and are as follows, viz:

U. S. District Court.

OTIS P. RUMBALL
vs.
THE STEAMSHIP PACIFIC, her machinery, tackle, &c.

The New York and Liverpool United States Mail Steamship Company, claimants in the above cause, hereby consent that Daniel T. Wilson, Calvin Coffin and others, be examined as witnesses de bene esse in this cause, on the behalf of the libellant, at the office of E. H. Owen, esq., No. 72 Wall st., on the 25th instant, at 11 o'clock a. m., and that their depositions when taken be read in evidence herein by either party, with the same effect as if regularly taken before a United States commissioner and filed, and that the

same be sworn to before any New York commissioner; the said depositions to be subject to all legal exceptions, saving only the mode of taking the testimony.

E. H. OWEN,
Claimant's Proctor.

New York, Sep. 24, 1851.

U. S. District Court.

OTIS P. RUMBALL
vs.
THE STEAMSHIP PACIFIC, her tackle, &c.

U. S. District Court.

THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY
agst.
OTIS P. RUMBALL, impl'd with others.

The depositions of Daniel T. Wilson and Calvin Coffin having been taken pursuant to the foregoing consent and stipulation, on the 25th September instant, pursuant to said stipulation, it is now stipulated and agreed, by and between the New York and Liverpool U. S. Mail Steamship Company, libellants, and Otis P. Rumball, respondent, that said depositions may be used and read in evidence by either party in the second above entitled cause, with the same force and effect as if regularly taken therein before a United States commissioner and filed, subject to all legal objections, saving as to the mode of taking the same.

New York, Sept. 30, 1851.

WEEKS & DE FOREST,
Proctors for Otis P. Rumball.

E. H. OWEN,
Proctor Libellants.

U. S. District Court, south dist. N. Y.

OTIS P. RUMBALL
vs.
THE STEAMSHIP PACIFIC, her machinery, tackle, &c.

The deposition of Daniel T. Wilson, a witness examined de bene esse on the behalf of the libellant in the above cause, who, being duly sworn, deposeth and saith:

Question. What is your age, residence, occupation, and how long have you followed such occupation?

Answer. I am aged 24 years; reside in Harrington, Maine; follow the sea, and have followed it twelve years; am now before the mast in the sch'r William H. Mitchell.

Question. Did you know the brig Alferetta, of Millbridge, Maine; if so, when; were you, at any time in August last, on board of her; if yea, in what capacity, and on what voyage?

Answer. I knew the brig from the time she was built; I was on board of her in August last; was mate of her on a voyage from Millbridge to New York; I was first mate; we had only one mate.

Question. When did she sail from Millbridge?

Answer. On the tenth of August last.

Question. Of how many persons did her crew consist?

Answer. The captain, (Otis P. Rumball,) a steward, myself, and four before the mast.

Q. What cargo did you sail with, if any?

A. With lumber—a full load.

Q. How far did you proceed on that voyage, and with what kind of weather?

Answer. We proceeded as far as the south side of Long Island, and had fine weather, and the voyage was interrupted on the 16th of August, on a Saturday.

Question. What was the state of the weather and sea during the afternoon and evening of Saturday, the 16th August?

Answer. The weather was pleasant, with a light breeze from the southweast in the afternoon; the wind continued from southwest by west during the evening of Saturday, and up to the time of the collision; the brig was going along about three knots an hour; the course of the brig at sunset on Saturday evening was northwest by west, she sailing on the wind close hauled; she continued on the same course until 8 o'clock p. m., when I went below, and staid below until a light was reported; I can't tell whether the brig changed her course while I was below, but I know she did not come about or tack ship; I heard a light reported, and immediately came on deck; I can't tell the time exactly, but it was between eight and 10 o'clock when I came on deck; I saw one light at first, and as it came nearer I saw more; I supposed it to be the light of a steamer; when I went on deck, the captain and two men were on deck, looking at the strange light; as I came upon deck our light was going forward; Coffin, one of the men, was carrying the light, and he put it into the fore rigging; I should not think it was more than half a minute after I came on deck, before the light was hoisted into the fore rigging; Coffin was carrying the light when I came on deck.

Q. How long after you came on deck was it before the collision took place?

Answer. I should think it was fifteen minutes; I think it could not have been less than this; I was watching the strange light until the steamer struck us.

Question. What was the brig's course after you came on deck, and up to the time of the collision?

Answer. I did not look at the compass, but she was on the wind

with larboard tacks aboard, and I judged she was going the same course as when I went below; she did not change her course from the time I came on deck until the steamer struck her. She was kept close to the wind, with her sails a good full up to the time she was struck.

Question. State all the circumstances within your knowledge as to the collision, in detail, as nearly as you can.

Answer. The steamer first struck the jib-boom and bowsprit, and carried them away. It was about the steamer's cat-heads that she struck the jib-boom; the wheel went over the forecastle; the brig's bows were stove in and cut down, and the wheel or wheel-house carried away the foremast. As the steamer struck the bowsprit she swung the brig round to the northward and eastward, and her wheel-house, or wheel, went over our forecastle. The brig began to fill, and filled almost immediately. After the steamer struck us she passed ahead of us, and went so far beyond us that we could not see her hull; we saw her light. As the steamer came towards us, before she struck, she was with all sails set, and her wheels going, carrying her through the water about thirteen or fourteen knots an hour, as I judged. Her headway was not stopped before she struck us; I should suppose not, at the rate she was going.

Question. What took place after the steamer struck you?

A. The brig filled with water, and a boat came alongside from the steamer and hailed us. Capt. Rumball asked the officer of the boat if he could lend him a boat, and proposed to stay by the brig if he would. The officer replied that he thought he could. The steamer's boat returned to the steamer, taking our crew and leaving the captain and myself on board, and while she was gone we got the trunks out of the cabin. I went below to see what water the brig was making; went down the after scuttle and met the water within two feet of the deck. The steamer's boat came back and reported that they could not let us have a boat, and we all went in the boat and on board the steamer. She carried us to Liverpool, and at Liverpool I shipped on board the steamer and came to New York in her. The tonnage of the brig was about 163 tons.

About eight o'clock Saturday evening I had seen the southerly shore of Long Island, bearing about northwest.

All hands of us abandoned the brig at sea.

Cross-examined.

I went below at eight o'clock, my watch being then out; it was then the captain's watch on deck—his watch was to continue till 12 o'clock. When I went below I laid down in my berth; did not throw off any of my clothes; did not go to sleep. I left the captain and two men, viz., Calvin Coffin and Bernice, a Portuguese; the steward was in his galley; nobody else left on deck. I left Bernice at the wheel; the wheel was aft the house on deck; it is about eight or ten feet high. I cannot say how long I had been below when

the light was reported. Cannot say exactly; not far from an hour. I should think Coffin first cried out that there was a light; I recognised his voice; I was in the house on deck. We made the land a little before 8 o'clock, about sunset. We judged it to be about Southampton; judged it to be about 20 or 25 miles off. It bore northwest. We were then heading N. W. by west, and we continued on that course until I went below. No light had been set before I went below. We then had the larboard tacks aboard.

Q. Were you then on the larboard or on the starboard tack?

A. We were on the starboard tack.

Q. Are you certain that you were on the starboard tack?

A. Yes, sir.

Q. Think again, and tell me whether you were on the starboard tack.

A. Yes, sir.

Q. How long had you been mate of the brig?

A. About a month; I had been mate of the brig Friendship a year ago for eight months; and also mate of the schooner Alvarado, last fall, for about a year. When I went below we were going about three knots; when I came on deck Bernice was still at the wheel.

Q. Can you tell how the steamer then bore from you by compass?

A. I did not look at the compass, and cannot tell how she bore from us by it; but I judged she bore about three points on our weather or larboard bow.

Q. Were her lights then distinctly seen by you?

A. Yes, sir.

Q. How many lights did you see when you first came on deck?

A. One.

Q. How far off did you judge the steamer at that time was?

A. Perhaps more or perhaps less—the weather was cloudy; she might have been a mile, might have been more, might have been less, might have been three miles or two miles; I did not give that any attention; I then judged she would pass our stern; that she would pass on the larboard side of us.

Q. How many lights did you afterwards discover on the steamer?

A. A great many; she looked as if she were all lights; I saw Calvin Coffin, when I came on deck, with a light in his hand; he was midships, going from aft forward with the light; it was a globe light, a signal light, as big round as my hat; when I went below, it was hanging in the cook's galley.

Q. Was the globe light lighted when you went below?

A. Yes.

Q. Did you see it lighted?

A. I saw the steward get his light to light his lamp.

Q. Was this globe light the steward's lamp?

A. No, sir.

Q. Did you see this globe light lighted before you went below?

A. Yes, sir; I saw him get a light and putting it to the globe light; he got the light from the galley; it is forward of the house on deck, close to it; Coffin might have been ten or fifteen feet forward of the galley when I saw him; when I came on deck the captain and his watch were there, and my watch came on deck immediately after me; Coffin went with the light into the weather fore rigging; he lashed it in the rigging on the shroud clean up to the eyes of the rigging, as high up as he could get, about eight or ten feet from the head of the mast; it was below the yards.

Q. Was it or not in the fore-top?

A. No.

Q. Did you observe when the light was lashed so as to describe the place accurately?

A. I cannot say on which shroud it was lashed; there were four of them, and it was lashed on one of them; I stood on the larboard side on the deck-load, just forward of the house; when Coffin went to hang the light, I was looking at the steamboat; I went from the place where I was standing forward a piece; cannot say to what part of the deck-load, but somewhere near the foremast; when I saw the steamer was coming into us, I ran aft, and got as far as the forward part of the house when she struck us; I never went aft to the wheel from the time I came on deck until the collision; when I came on deck, the captain was standing at the forward part of the house; I did not afterwards observe him, or notice what he did.

Q. When did you next notice Coffin after you saw him going with the light into the rigging?

A. I saw him standing in the rigging; and the last I saw of him was, when he jumped out of the rigging just as the steamer struck us; after she ran into us, I saw him on the deck-load by the forward part of the house.

Q. Was any hail or other noise made by any person on board of the brig?

A. No, sir.

Q. Why did you not hail?

A. Because it was so quick done that we had no time to hail after she drew so nigh us.

Q. How long before she struck did you think she was coming into you?

A. Just before she struck.

Q. How long was it from the time you got on deck until you were struck?

A. About fifteen minutes.

Q. By the watch, or by estimate?

A. What I calculated.

Q. Did you not fear or think there would be a collision until just before it occurred?

A. No, sir.

Q. Have you seen the Alfaretta since the collision in a port?

A. Yes, sir; I saw her in New York about a week ago.

Direct resumed.

Q. Did you sign any protest as to this accident?

A. I did; and the protest now produced is the one signed by me, Capt. Kimball, and three of the men. (It is marked A, and with the proctors' names.)

Q. What tack do you call it when the larboard tacks are aboard?

A. Starboard tack; when the starboard tacks are aboard, I call it the larboard tack.

Q. Was the direction of the brig changed at all before the collision?

A. Not that I know of; I was not at the compass.

Q. I speak of the direction of the brig, not her course.

A. It was not changed at all—not that I know of. Just before she struck the topsail lifted, but the other sails were full. Just before the steamer struck us I heard the captain give the order just to keep her full and by; Bernice was at the wheel.

Q. Where was the light lashed by Coffin; 8 or 10 feet from the mast-head, or from the top of the mast itself?

A. From the top of the mast, not the mast-head. It was below all the yards.

Q. Was there any conversation between you and the captain on deck, after you saw the steamer's lights and before she struck you?

A. When I went on deck the captain asked me which way I thought she would go, and I replied I thought she would go by our stern; he said he thought so too. I don't remember anything else. My watch came on deck just after me. We had a deck-load of lumber on board, piled up even, about as high as the house; my cabin was in the house, and when I say I went below, I mean that I went into my cabin; I am now about going to sea, on a voyage to St. Mary's.

Q. How long was it that Coffin staid up in the fore rigging?

A. He staid up there until just time enough to get out of the fore rigging before she struck.

Q. Are you sure that the topsail lifted at or just before the steamer struck you?

A. I am sure that the brig was close to the wind immediately before the steamer struck us; the topsails lifted, and the other sails were just full.

DAN. T. WILSON.

Sworn to before me, this 25th September, 1851.

FRANCIS H. UPTON,
Commissioner of Deeds.

Endorsed: U. S. district court, south dist. N. Y. Otis P. Rumball vs. The Steamship "Pacific," her tackle, &c. Dep'n of Dan'l T. Wilson.

U. S. District Court, south dist. of N. Y.

OTIS P. RUMBALL
vs.
THE STEAMSHIP "PACIFIC," her tackle, &c.

THE N. Y. AND LIVERPOOL U. S. MAIL STEAMSHIP COMPANY
vs.
OTIS P. RUMBALL.

John McMahon, a witness produced de bene esse on the part of the libellant in this cause, being duly sworn, deposeth and saith, he is aged about fifty years; that he follows the sea, and is now about going to sea on a voyage to Santa Cruz. I was on board the brig Alfaretta, commanded by Captain Rumball, on her voyage from Millbridge to New York, in August, 1851; I was a seaman on board the brig; her crew consisted of seven men—Captain Rumball; Dan Wilson, the mate; a Portuguese, his name was Bernice; Andy Dixon, Calvin Coffin, and Lowell Look, and myself. I was on board of the brig at the time of the collision with the steamship "Pacific."

Q. About what time did the collision take place?

A. I don't recollect the day of the month; it was on a Saturday, about nine o'clock in the evening.

Q. What tack was the brig on, and what was the state of the wind?

A. The brig was on the larboard tack, sailing close-hauled on the wind; the wind was light; the brig was sailing about three or four knots an hour, as nearly as I could judge; the wind was from the westward, but I cannot give the exact point; my watch on deck ended at eight o'clock in the evening, and I then went below; I did not get into my berth, did not go to sleep; I sat at my chest and filled my pipe with tobacco, and began to smoke it; I remained below, as nigh as I could guess, about half an hour or so; I cannot tell you, sir, exactly the man who was along with me to come up; that a light was sung out, and I then went on deck; the light was sung out, and I heard the captain order a light to be put in the rigging; I came on deck; when I came on deck I saw a light on the larboard bow; there was a light in our fore rigging when I came on deck; it must be Coffin who put it there.

Q. On what tack was the brig when you came on deck?

A. On the larboard tack; she was close to the wind; was much about the same then as when I went below.

Q. Were any orders given by Captain Rumball after you came on deck?

A. I heard him say twice to the man at the wheel, (Bernice) "keep her a full and bye." Just as the steamer came into the brig, the captain called out, "Men, come aft and look for yourselves."

Q. What did you do after you came on deck?

A. I stood upon the deck-load watching the light of the steamer. I brought my pipe up with me and kept smoking till the steamer came into us; I don't recollect that I did anything else.

Q. About how long was it from the time the steamer's light was reported until the collision took place?

A. As nigh as I could judge, from fifteen minutes to twenty minutes.

Q. How long before the collision did you begin to think the steamer would strike you?

A. I never thought the steamer would come into us at all until the moment she got most into us.

Q. How near the wind was the brig just before the collision?

A. She was as near as she could be; she was close hauled, and the sails were lifting.

Q. What sails were lifting?

A. The topsail and the topgallant-sails—the brig was under all sail; all the sails she had bent were set.

Q. How long before the collision did the topsails lift?

A. About five minutes or so, and just a little before the steamer struck us.

Q. Did Captain Rumball give any other order as to the steering of the brig, excepting "to keep her full and bye?"

A. Not that I could hear, sir. The brig was not kept away at any time after I came on deck; she was kept close on the wind after I came on deck, up to the time of the collision.

Q. Where did the steamer strike you?

A. She struck the larboard bow; I can't tell what part of the steamer it was that struck the brig first.

Q. What was the headway of the steamer as she struck the brig?

A. I can't tell you, sir, but she came like the shot of a gun; the foremast of the brig came down; I can't tell what other particular damage was done to the brig, as I did not go forward. The captain called out to try the pumps; I went to the pumps and tried *it*; I found water enough; Captain Rumball went forward, and when he saw how far the bows were cut in, he told us to knock off the pump.

Q. State what was done on board the brig after this, and until you left her?

A. I went down into the steerage to get out some of my things; I was up to my knees in water; the boxes floating about there knocked me down, and I went on deck again; a boat came along-

side from the steamer; Captain Rumball wanted to know if the boatswain's mate (of the steamer) would leave him a boat. The boatswain's mate asked Captain Rumball if he had not a boat of his own; Captain Rumball said he had, but that they were stove by the fall of the foremast; they went to look at the boats, and then the steamer's boat carried the whole crew off to the steamer, excepting the mate and captain; I went to the steamer in the boat; when the boat came alongside the steamer, Captain Nye called out whether any of the officers of the brig were there; Bernice, the Portuguese, said there was—that the second mate was; Bernice had the title of second mate. Captain Nye then said, "What is the reason you run into us?" Bernice began to swear, and got very angry, and said, "you run into us." The captain then called the boat alongside and sent the chief mate of the steamer back to the brig; all hands of us went back to the brig. When we got back to the brig Captain Rumball and the mate were cutting the mainmast out of her. The steamer's boat took off Captain Rumball and the mate, and we all went on board of the steamer and were taken to Liverpool.

Q. What became of Bernice on board the steamer?

A. They took him into the cook's galley; he was in the galley doing something or other with some Portuguese there—washing dishes or something; coming to New York from Liverpool he was with the baker; I have not seen him since; I don't know where he is; I have not seen him since we landed here, on a Sunday.

Q. On which side of the brig did you suppose the steamer would go before the collision?

A. I calculated all the time she would have gone aft of the brig; I thought so until Captain Rumball sung out, "Men, come aft and take care of yourselves." Captain Rumball sung out just before she struck us.

Cross-examined.

I joined the Alfaretta in August, 1851, at Millbridge; the brig was on her voyage from Millbridge to New York when the collision occurred; it was not my watch at the time of the collision; I belonged in the mate's watch; my watch on deck before the collision was from 6 to 8 p. m.; it was the "dog-watch;" Dixon had the wheel during my watch; I can't tell the point of the wind at that time, but it blew from the westward for certain; it was cloudy; it was a light breeze; I don't know exactly how the brig was heading during our watch; at the time our watch ended, we had all sails set; I had not seen land, but land was reported from the top-gallant yard; I don't recollect from what quarter it was reported; we were on the larboard tack when I went below; I sat upon my chest; I think we were about half an hour below when I heard the light reported; I went immediately on deck, and saw the steamer's light; I was midships when I saw it; the light bore off our lar-

board bow about a couple of points off, I should judge; it appeared to be about three or four miles off; I saw a red light; I did not observe, and can't therefore state, how far a vessel without light could be seen; the moment I heard the light reported I heard the captain sing out, "Steamboat, get a light in the rigging;" when I came on deck the brig's light was in the rigging; it was in the fore rigging, on the larboard side; it was five or six ratlins above the deck-load, near the foretop; I heard no order in reference to the helm before I came on deck; I remained about the same place where I was when I first saw the light until the captain told us to come aft; the captain was aft; as far as I can judge it was about a quarter of an hour after I came on deck before the captain told the men to come aft.

Q. How long after you were told to come aft before the collision?

A. Upon my word, sir, it was not long.

Q. Was it a minute?

A. It was not a minute, I am certain.

Q. From the time you went on deck until you were told to come aft, had you observed the light?

A. Yes, sir; from the time I came on deck I was continually looking at the light, except when I may have turned about.

Q. How long after you came on deck before you heard the captain order the man at the wheel to "keep her a full and bye?"

A. I suppose about five minutes or so.

Q. When did you next hear him give that order?

A. I heard him twice give that order while I was on deck; I can't say how long after the first before the second was given?

Q. Was it pretty soon after the first that the second was given?

A. It was, sir; yes, it must be.

Q. Were those orders obeyed; and if so, how did that affect the course of the vessel?

A. I know the orders were obeyed, because I saw the sails lifting; this would not change the heading of the vessel, but keep her up close to the wind.

Q. What sails did you see lift?

A. Her topsail and the topgallant-sail.

Direct resumed.

Q. When you went back from the steamer to the brig in the steamer's boat, did you hear Bernice say to the steamer's mate that "he, Bernice, had kept the brig away," or "that he was so frightened he did not know what he was about," or anything to that effect?

A. I did not hear Bernice say anything like it; I never heard Bernice say anything like it; when the boat first went alongside the steamer, Bernice said, in answer to Captain Nye, that the steamer run into the brig.

Q. Was any order given on board the brig "to port the helm?"
A. Oh no, sir.
Q. What condition were the brig's boats before the collision?
A. They were in good condition; we were working them in Millbridge.
Q. Did you sign a protest for the brig at Liverpool?
A. I did; and this is my signature on the paper now produced.

JOHN McMAHON.

Sworn to before me this first day of November, A. D. 1852.

JOSEPH SWEENY,
Commissioner of Deeds.

It is hereby agreed that the foregoing deposition of John McMahon be read in evidence on the trial of the above mentioned causes, and either of them, to either party, as if regularly taken before a United States commissioner pursuant to an order for this purpose, and as if regularly filed, subject to all legal exceptions, saving as to the manner of taking the same.

E. H. OWEN.

New York, Nov. 1, 1852.

Endorsed: U. S. district court. Otis P. Rumball vs. Steamship Pacific, &c. The New York and Liverpool S. S. Co. vs. Otis P. Rumball. Deposition of John McMahon.

United States District Court, south dist. N. Y.

OTIS P. RUMBALL
vs.
THE STEAMSHIP PACIFIC,
her tackle, &c.

Calvin Coffin, a witness examined de bene esse on the part of the libellant in the above cause, being duly sworn, deposeth and saith, that he is of the age of twenty years, resides in Harrington, and follows the sea, and has followed it since he was about fourteen years of age; that he was shipped as seaman on board the brig Alfaretta on her recent voyage from Millbridge in August last; he sailed from Millbridge on the 10th August last, bound for New York, with a full cargo of lumber on board; the weather was fine and generally continued so; I sailed in her; the brig proceeded on her voyage; about sunset of Saturday, the 16th of August last, we made the land from the topgallant yard, which was about twenty miles distant, as I judged, on the starboard bow; the weather was fine, and the wind light from southwest by west; the brig was sailing on a course northwest by west, close hauled with larboard tacks aboard and all sail set; the brig was going through the water at the rate of about three or four knots an hour.

Q. What tack do you call it when the larboard tacks are aboard?

A. When the larboard tacks are aboard, the sails are over on the starboard side, and I call it the larboard tack. The brig was kept on the same course from sunset until the Pacific struck her; the wind continued from the same direction—was lighter than at sunset. Between 8 o'clock and 10 o'clock Saturday evening, I saw a strange light on the larboard bow, about two points on the larboard bow; it was the captain's watch on deck; I was in his watch, and Bernice; Bernice was at the wheel; I was forward on the look-out; I saw the light first, and reported it to the captain by singing out to him; the mate came up on deck.

Q. Did the mate's watch come on deck?

A. They came on deck as the steamer struck us.

Q. How long was it after you reported the light that the steamer struck you?

A. About fifteen minutes. It was not half a minute after I reported the light, before I took the light from the steward—a signal light, a globe lantern; he handed it to me about midships, and I took it up in the fore rigging, just under the fore yard, and tied it there; and after I tied it there, I stood there in the rigging watching the steamer's light; I stood there, I suppose, nearly fifteen minutes; I could not tell how far off the steamer was when I tied the light; the brig was kept on the wind in the same direction while I was up in the rigging; the sails were kept just full until she struck us; I was watching the steamer all the time I was in the rigging; as I saw the steamer coming very near to us, I started to come down from the rigging, and I had fairly touched the deck and had got about ten foot aft when she struck us; I was going as fast as I could; she struck the brig's jib-boom with her cat-heads, I suppose, and her wheel went over the forecastle, carried away the foremast and the bulwarks, and cut the brig down to the water's edge; the steamer passed ahead of us, and went so far ahead that we could not see her hull; she sent a boat alongside; I did not hear the captain say anything to the officer of the boat; the boat went back to the steamer, leaving the captain and mate on board the brig; we went to get a boat from the steamer to stay by the wreck; we did not get the boat; the captain of the steamer would not let us have any; we then returned to the brig in the steamer's boat, and took off the master and mate and abandoned the brig. I signed the protest, (now produced;) the signature is in my handwriting. (Protest marked A, before referred to.)

Cross-examined.

I shipped on board of the brig the 27th of July last; my watch commenced at 8 o'clock; before our watch had commenced, I had been around on deck; from the time our watch commenced Bernice

stood at the wheel; I was forward on the look-out; the captain was walking about deck; at the time I first saw the steamer's light, the brig was heading northwest by west; the direction of the brig was not changed at any time before the collision; the light that night was not set on the brig until we saw the steamer's light; it was set immediately after; the light was a signal light; we had no other light aboard which we set; the steward lighted this light; he was in the galley, and had it lighted there; the captain told him to hand him the light; I heard the captain tell him to hand him the light; I went to him and took the light from him and went into the rigging and fastened the light there; I had it fastened and was up there some time before I left the rigging; the light was there while I remained in the rigging, and I did not go down until immediately before the vessels struck.

We went to the steamer to get a boat to stay by the brig; we had no boat; the long-boat was stove by the collision; when I first saw the steamer I saw one light. I suppose it was the one which was hung up in the fore rigging; I knew it was a steamer's light. I saw this light about two points on our larboard bow. I could not hear the noise of the wheels at that time; it was not more than five minutes before I saw other lights on the steamer; I saw them on her starboard quarter. I did not see more than one at first. The mate came on deck in about half a minute after I saw the light. I suppose he came on deck because he heard the light reported. After I reported the light I don't know what was done on board the brig, except that I put up the light in the rigging. I heard no orders given by the captain of the brig; the sky was overcast that night; it was cloudy. I don't know how far you could see a vessel without lights; I cannot say; you must judge yourself how far you can see a vessel in a cloudy overcast night; I can't give any kind of guess how far off the steamer was when I first saw her lights. There was no hail to the steamer from the brig; there was no time to hail before she struck, and she could not have heard if we had hailed. When I first saw the steamer I thought she was going astern of us, and it was not a minute before she struck that we thought she was coming into us; the light which I fastened up was placed in larboard fore rigging; this light was placed there somewhere between 8 and 10 o'clock; I can't tell how long after dark it was; I can't tell how the steamer bore from us by compass at the time I first saw her light; I have followed the sea about six years; have always been a common sailor.

Direct resumed.

Q. How near the wind was the brig immediately before the steamer struck you?

A. She was close to the wind, under headway; the topsails lifted a little, and the other sails just full.

CALVIN COFFIN.

Sworn before me this 25th day of November, A. D. 1851.

J. MANSFIELD DAVIES,
Commissioner of Deeds.

Endorsed: U. S. district court. Otis P. Rumball vs. the Steamship Pacific, &c. Dep'n of Calvin Coffin.

WEEKS & DE FOREST,
Proct's for Liblt.

United States District Court, S. D. N. Y.

THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY
vs.
OTIS P. RUMBALL and others.

OTIS P. RUMBALL
vs.
THE STEAMSHIP PACIFIC, her machinery, &c., the NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY, Claimants.

Lowell A. Look, being duly examined as witness de bene esse on the part of Otis P. Rumball, in the above entitled actions, and being duly sworn, deposeth and saith, that he follows the sea, and has for eleven years past; that he was born and brought up in Addison, in the State of Maine, and hails from there. I was on board the Alfaretta in August, 1851. I was the cook. The brig Alfaretta sailed from Millbridge, Maine, for the city of New York, about the tenth day of August, with a cargo of lumber, *whole* full and deck-load. On Saturday, the 16th, before sunset, we had got about twenty-five miles to the southward and eastward of Fire island, on the Long Island shore; at sunset the wind was southwest by west; the brig was on the larboard tack, standing inshore; she was within 6 points of the wind; there was not quite a whole-sail breeze; the vessel was going about three or four knots through the water. The captain's watch came on at eight o'clock that evening. The crew consisted of capt'n, Otis P. Rumball, Daniel Wilson, mate, Antoine Bernice, 2d mate, myself (cook), Andy Dixon, seaman, Calvin Coffin, John McMahon; Bernice and Calvin Coffin were in the captain's watch; Andy Dixon and John McMahon were in the mate's watch; I heard a light reported that evening about twenty minutes past eight o'clock. I don't remember now who it was who sung out the light; it was one of the watch on

deck, either Bernice or Coffin. I was below when the light was sung out. I came right on deck; Bernice was at the wheel. When I came on deck the captain was walking the quarter-deck; Coffin was midships. I saw the light when I came on deck; it bore about west from us; the brig was then on her larboard tack; she had not changed her tack, and had not changed her course—was by the wind; after I came on deck I stood on the quarter a minute, and the captain told me to get the lantern. I got the lantern, took it and got it lighted, and gave it to Calvin Coffin about midships; he carried it to the larboard fore rigging and hung it there; this was a large globe light; it was as good a light as you see on board of any ship and burned well; I judge it was betwixt five and ten minutes after the light was set, that the steamer struck us; before we set the light the captain asked the mate what he thought the strange light was; he said he thought it was a steamer. In a few minutes we saw three or four lights, and we knew it was a steamer then, and could hear her wheels; the sky was a little cloudy; some stars out overhead, and hung kind of thick to the westward; the vessel turned out to be the steamer Pacific, of New York. The steamer struck the brig on the larboard side, forward of the fore swifter, or forward of the fore shroud; the fore topgallant stay of the brig caught over the steamer's starboard cat-head; that was the first they touched; that slewed the brig around to starboard; her bowsprit took against the side of the ship about ten feet forward of the wheel, and then her wheel struck the brig, crrried away her bowsprit, foremast, and main topmast, and cut the brig down to the water's edge. The brig filled then in a few minutes; Captain Rumball hailed the ship and told them to stop; in five or ten minutes the first mate of the steamship came on board; the captain asked him (the steamer's mate) what he thought about staying by the brig. The mate (Mr. Woodfine) told the captain he would tell him when he got in the boat, and ran aft and got in the boat; and then he told the captain it is coming on dirty weather and the brig is not fit to stay by. [Conversation objected to.]

The captain wanted to know if the captain of the steamship would let him have a boat so as to stay by the brig; the mate told him he did not know. The larboard backstay fore topmast backstays tore the bow out of the brig's boat when the foremast fell.

All but the captain and mate of the brig got into the boat and went alongside the steamer; the mate (Mr. Woodfine) asked Captain Nye if he could not let the brig have a boat to stay by her in; that she was full of water; Captain Nye said he could not; we then rowed back to the brig and got the captain and mate of the brig. As the ship's boat came alongside the brig, Captain Rumball told them to keep her off from the brig while he cut the mainmast away, which was done. The boat came under the brig's stern, the cap-

tain and mate got in, and all deserted the brig and went back to the steamer; we went to Liverpool in her.

Q. How was the brig heading at the time of the collision?

A. Northwest by west; her course had not been changed, and she was six points of the wind.

After I came on deck, I was notdoing any thing; I saw the light; I noticed the brig's sails, and the vessel was by the wind, the topsail lifting. The brig was on the wind all the time, from the time I came on deck until the collision took place.

I did not hear Bernice say anything in the boat about keeping the brig off; the brig was not kept off; she was by the wind.

I have not seen Bernice since we came ashore from Liverpool; he was a Portuguese, and spoke rather broken English, so that we could understand him pretty well.

The brig had all sail on her except the main topgallant staysail.

Cross-examined.

I joined the brig the 16th July, 1851, in Boston, as cook, and continued in her as such until the collision. Took supper at half-past 5 o'clock p. m. We saw Fire island a little before 8 o'clock; I don't know how it bore from us; I saw it off our starboard bow. The mate and captain saw the land; I can't say whether the others saw it or not; I only know that it was Fire island from what the captain and mate said; they said it was; they judged it 25 miles off. We were then heading northward by west by the wind; I am sure of that; I know this, because they would not have been off the wind when beating to the windward, and the wind was dead ahead, and we were beating to Sandy Hook. The brig will lie within six points of the wind.

The collision occurred about 20 minutes past 8 o'clock; the watch was changed at 8 o'clock.

The brig changed to the larboard tack about 2 o'clock p. m., and had been standing on that tack all the time afterwards until the collision.

I was in the cabin when the light was reported; I was doing nothing; I went right on deck and went to the larboard quarter, about 25 feet aft the mainmast. I then saw the light just about west from us; I saw it off our larboard bow—about 2 points off our larboard bow—there was nothing to obstruct my view of the light. I can't tell how far off the light was; I have no idea whether it was two miles, or three or four miles. I saw a white light; then the captain told me to go and get the lantern which was in the galley; I went and got the lantern and lighted it, and carried it along midships and gave it to Calvin Coffin. The steamer's light still bore the same. We could not hear the wheels of the steamer then; after I gave it to him I went aft and stood on the same quarter. Coffin hung the light in the larboard fore rigging, about half way from

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the deck-load top of the fore rigging, in one of the shrouds, and he stopped there. I can't tell how far off the steamer was at this time; I kept looking at her, then I could hear her wheels, and could see her lights; I saw a white, red, and green light. I could not see any lights in her cabin; I could not see them because she was head to; if she had had her side to us we could have seen them. I stood there until the collision; the blow was right across our bow. We did not hail the steamer until after she went over us; the steamer bore about west of us all the time. After we heard the wheels we were heading northwest by W.; I know this because I looked at the compass. The compass is aft by the wheel; I went aft to look at the compass; I went to look at the compass to see if the steamer would go clear of us. I did not see the captain or mate go to look at the compass. After I had looked at it I came back to my place again. I can't tell how far off the steamer was then, but could hear her wheels plain. The brig was going this time 3 or 4 knots through the water. It wasn't more than half a minute before the vessels struck that I thought she would strike us. When we thought she was coming into us, the captain, mate, and 2d mate, and I, were aft on the larboard side of the quarter. I was very little scared; I don't know how the rest were. The look-out came down from the rigging and was standing amidship at the time.

I know the brig's topsail was lifting, because I looked at it and saw it. I looked at it after I came from the compass.

Re-direct.

Q. Could you see the brig's helm from where you were standing?

A. I could; the helm was not put to port before the collision; I can't tell exactly how high the deck-board was—about nine feet above the deck. I am about going to Philadelphia.

LOWELL A. LOOK.

Sworn before me, this 5th day of May, 1853.

GILBERT S. NIXON,
Com'r of Deeds.

Endorsed: U. S. district court. Otis P. Rumball et al. ag'st Steamship Pacific. Copy deposition of Lowell A. Look.

Charles L. Vose, (sworn). Knows brig Alfaretta; has made search for Bernese, (Portuguese sailor) and Handy Dickson; wrote to Millbridge, also employed runners in city, and used every means in his power, in good faith, to discover them.

Cross-examined.

Began seeking those men at request of Mr. De Forest, as soon as suit was commenced; i. e., supposed it was so; can't tell how long it was after Pacific returned to New York.

Defence to 1st Suit No. 1.

Ezra Nye, (sworn.) Examined as to his interest; witness is stockholder, and co'y; ownership is in a company—all one concern. (Withdrawn.)

George Balchen, (sworn). Was passenger on Pacific at time of collision; has been master of a ship at sea; went below about five minutes before the collision, and came on deck as soon as he heard the collision.

The day after Captain Rumball came on board, witness had a conversation with him; wit. knew position of brig, and asked Capt. Rumball whether he kept brig away when he saw lights of steamer; he said "he did keep her away;" witness asked why he did it; he replied, "he did not keep her away till he showed his light, and did so because he thought the steamer was going the other way, to westward;" wit. told him that would be unnecessary if steamer was going the other way.

Cross-examined.

That was all the conversation they had together; had not known Capt. Rumball previously; passengers were about there at time of conversation; this was in forenoon, before dinner.

Light of brig had not been reported when witness went below; witness did not see the light at all; did not hear report of light on ship; might have been below over five minutes, but not much; had his little boy by the hand, and was preparing for tea.

Capt. Nye again, (having executed a release to G. F. Betts). Was captain of Pacific at the time of collision; was on the starboard paddle-box when vessels struck, and got off as brig passed, after collision.

8 bells had just struck, when witness left deck of ship and stepped into his room, calculating ship's position. Had just entered room; heard first officer call out, "Hard starboard!" Wit. instantly left his room, and in 2 seconds was on starboard paddle-box, where found 1st officer. As wit. went up paddle-box, asked if helm was hard starboard, and as he got up saw brig 2½ to 3 points on ship's starboard bow; ship was then swinging off rapidly towards Long Island shore; ship was steering east by S., or east ½ south; the light of brig was then just discovered—all the work of not a ¼ of a minute. Brig then heading W. by N. or W. N. W.; judges that as course of brig, from what capt. said—he saw her close hauled by wind; brig was 2 points off starboard bow, not over ⅓ of a mile off; light then stationary, or pointing towards ship, or parallel with her, and instantly it turned directly across her bow. Just before contact, ship swung rapidly off, and brig came right into ship; does not know course of brig, further than she headed into

steamer. Brig was then directly before the wind, as near as he could judge, with her mainsail down—saw that down when she struck.

When first saw position of brig, wit. observed to his 1st officer, brig was going to run into ship or across bow; and wit. jumped off paddle-box to engine bell-wires, which are foot of paddle-box, and signalled to stop and back, and engine was backing as strong as could; headway not lost; impetus of ship was strong ahead. Had conversation with Capt. Rumball, but chiefly next day; occupied that night with damage to ship.

Next day, capt. said he was so frightened or panic-stricken, he did not know what he did at time; did not deny he had his brig before the wind, and thinks capt. said they cut away halyards, to let her go; his officers said same thing.

Witness asked Capt. R. why he altered his course and did not keep on his course; that was all steamer wanted. The reason he gave was, that he was so frightened he did not know what he was doing; did not know the course the steamer was going.

Pacific carried green light on starboard box, red one on the port box, and bright light at foremast head: the U. S. regulation lights.

Capt. R. admitted his light was not lashed up; it was held up by hand; no difficulty in mariner's knowing from steamer's lights how she is steering, if they understand their business; the different colored lights always determine that clearly.

Brig struck ship just forward of fore rigging, on her starboard side; jib-boom made a hole through side and broke off; and a few feet below that, bowsprit struck side of ship; holes covered with strips of copper.

Cross-examined.

Did not hear light of brig reported on ship; that order would be instantaneous with report of light, and witness is not certain but he heard report of light; 1st officer gave only the one order; wind was S. W. by S.; was free for ship; all her sails were set, and studding-sails; breeze was rather fresh, sufficient to fill steamer's sails going before it; supposes her rate then was about 12½ knots; she was heavily loaded, and when first goes out would not make more than that. Witness's cabin is on spar-deck and close by the door on starboard side, just abaft the wheel; his room is abaft of paddle-box 10 or 12 feet, and his door opens aft of officer's; don't recollect that he had, personally, any conversation with any of crew of brig, except capt., and with him the next day only.

Steamer is 289 or 290 feet in all; her shaft is 14 feet abaft centre of ship and in centre of paddle-box; diameter of wheel, 36 feet 2 inches; foremast about 40 feet from bow of ship.

Thinks night was a dark starlight; no moon, but a fine night; been at sea 30 y'rs; commanded a ship 25 y'rs; could not, proba-

bly, see a small vessel like the brig coming head on towards him, not over ½ a mile. Ship would get off her course two points, with helm hard starboard, in from 10 to 15 seconds; ship steers with great rapidity; could determine very nearly, without difficulty, the course of wind when any way aft and enough to fill her sails; can tell whether directly aft or 2 or 3 points varying from that, by the sails, just as well as on sailing vessel; goes the paddle-box from spar-deck by a ladder at each end of it, about 7½ feet from top of upper deck.

There is a hatch open to engineer's room; communication with him is by bells, but thinks he spoke down the hatch on this occasion, to back strong; often does; not certain as to this time.

Direct.

Asked, in going on to paddle-box, whether helm was hard a-starboard; addressed to 3d officer, whose duty it was to attend to steerage, and is stationed aft for that purpose. Reply was, hard starboard. If brig had held a W. N. W. course from time witness first saw her light, it would have been impossible for the two vessels to have come in contact. If she was 6 points off the wind, she would be heading north; such vessels, in smooth water, generally go within 5 points or 5½.

Charles Tompkins, (sworn.) The Pacific had the usual lights up that night; no difficulty on brig in determining by those lights what her direction and course were. When witness first saw the brig she was standing as nearly before the steamer as possible, at right-angles, and she fell off more as he looked at her, and struck the ship at a more acute angle. When two vessels struck, brig was before the wind, her sails becalmed; thinks it was from 1 to 3 minutes after he saw the light to time of seeing the brig—given time to run aft to quarter-house and back, to notify officer.

The deposition of Charles Tompkins is here read, and is as follows:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Charles Tompkins, being duly sworn and examined as a witness de bene esse on the part of the Steamship Company in the above entitled action, deposes and says:

I was boatswain on board of the Pacific on her voyage to Liverpool in August last, when a collision occurred between her and the brig Alfaretta; I was stationed between the fore rigging and topgallant forecastle on the main deck; my duty is to see that the look-out attends to his duty, and that he reports to me if any thing be seen ahead; I took my station at 6 o'clock p. m.; William Ashbridge was the look-out on the starboard side; he took his station at the time I did mine; Francis Faircloth was the look-out on the larboard bow; there was a light reported to me by Ashbridge; he

reported it as a light two points in the starboard bow; I looked and saw the light; I judged it to be from two to two and a half points on our starboard bow, as near as I could determine by my eye; I immediately reported the light; I sung out, "Light two points and a half on the starboard bow;" I heard an answer given me, "Aye, aye," and an order from the first officer, "starboard," in one breath, one following the other; I was moving aft at the time; when I got on the house alongside the forward part of the paddle-box, I asked the first officer if he saw the light; he answered, "All right, I see it," and immediately sung out, "Hard a-starboard;" I then saw the captain two-thirds of the way to the top of the paddle-box; I then returned forward; when I got forward to the fore rigging the collision took place.

Q. Can you state, certainly, whether it was the first officer or the captain who gave the order, "hard a-starboard?"

A. I cannot.

Q. Was the ordered obeyed, and did the ship fall off?

A. I imagine she did by the becalming of the sails; I had no compass, and speak only from my judgment.

Q. How did the brig head at the time she came into you?

A. My opinion is, that she headed north or north by east.

Q. Does the Pacific mind her helm quickly, or otherwise?

A. She answers very quick.

Q. What became of the brig's crew?

A. They were brought aboard of the steamer, by the steamer's boat.

Q. Had you any conversation with the crew as to what was done on board the brig? [Objected to.]

A. I had; it was on the following morning, with the second officer of the brig, a Portuguese, I believe; I don't know his name; he was the man who said he was at the wheel; he said this in presence of some one of our crew; I was at breakfast from 8 to 9 o. c.; I asked him how in the world they came to run into us; I asked him how he put his wheel when he saw us; he said, he put his helm "hard-up;" I asked him how the brig headed when she struck us; he told me that when the vessel struck, she headed from north to north by east when he left the wheel—when he last observed the compass; he made no remarks about the lights of the steamer.

Q. Why did you ask him how the brig headed? I want you to tell whether it was, or not, to test your own previous judgment. [Objected.]

It was, sir.

Q. Had you any other conversation with that man, or any of the brig's crew, upon the subject?

A. No, sir.

Q. Did you hear the captain of the brig say any thing upon the subject to you, or anybody else?

A. No, sir.

Q. Suppose the brig had not been kept away, and the Pacific had kept her course, what would have been the result?

I believe we both would have gone clear; this is my judgment.

Cross-examined.

Could the course of the steamship have been varied a point or two points without your observing it?

A. No, sir.

Q. How would you have observed it?

A. By the becalming of the sails.

Q. In any other way?

A. No, sir.

Q. When did you first observe if you could see the direction of the brig?

A. The brig, sir; I did not observe her until I returned forward; the light is all I saw.

Q. In what position was the brig when you returned to the fore rigging?

A. She was coming head on to us; I should judge a quarter of her length off.

Q. What part of the Pacific first came in contact with the brig?

A. The bow, sir, between the topgallant forecastle and the forward part of the fore rigging; I suppose fifteen or twenty feet forward of the fore rigging.

Q. What part of the brig first came in contact?

A. The jib-boom. The jib-boom was broke off, and knocked a hole in the ship; I saw the hole the following morning.

Q. Describe the damage done to the steamer by the jib-boom; confine yourself to that.

A. I suppose the hole was one-half through the plank.

Q. Was a new plank put in the steamer at Liverpool?

A. No, sir; there was a board nailed over it.

Q. In what particular place was it that you had the conversation with the Portuguese?

A. It was down, sir, on the first deck, below the main deck, just opposite the mess-room; nobody else was present; I was eating breakfast at the time, and he was coming on deck from below; he stayed there talking with me from 5 to 10 minutes; we were alone all the time.

Q. Did he say anything about his having been alarmed?

A. Yes, sir.

Q. What did he say about that?

A. He said he was frightened; that the steamer would run him down, and he thought by putting the helm up he would go all clear of us.

Q. Did you hear any order to stop the engines?

A. No, sir.

Q. Did any one on board the Pacific hail the brig?
A. Not to my knowledge.
Q. Why not?
A. That is more than I can tell you, why it was not done.
Q. Did you hear any hail or any voices from the brig?
A. No, sir.
Q. Could you have heard voices from the brig so as to have distinguished what was said?
A. I could if I had nothing else to think about.
Q. What else had you to think about when you were going forward to the fore rigging?
A. My mind at that time was occupied on my sails being becalmed.
Q. Did you observe the brig's light from the hurricane-deck when you went aft?
A. I did, sir.
Q. Had you then any apprehension of a collision?
A. I had, sir.
Q. Where was Ashbridge when you got back to the fore rigging?
A. On the topgallant forecastle, on the starboard side, leaning up against the main rope.
Q. Did you see him there then?
A. I did, sir.
Q. How long did he stay there after you returned to the fore rigging?
A. I could not say, sir.
Q. *Do* you see him come down?
A. No, sir.
Q. Was he there at the time of the collision?
A. He was, sir.
Q. Did you see him there then?
A. I did, sir.
Q. Can't you be mistaken on this point?
A. There were two men there; if he came down it was unbeknown to me; I imagined it was the two look-outs; (question repeated;) I use my own imagination and judgment that it was the two look-outs.
Q. Did any man descend from the forecastle to the main deck after you returned to the fore rigging and before the collision?
A. Not to my knowledge, any thing more than one of the engineers.
Q. What engineer?
A. Alexander Cunningham, an assistant engineer.
Q. Was he on the forecastle when the light was reported?
A. He was, sir.

Q. Was he not one of the two men you saw there when you returned?

A. No, sir.

Q. Did he come down after you returned?

A. As I was returning; leaving two men there.

Q. Could you, from your position at the fore rigging, see the hull of the brig when you returned?

A. I could, if I had drawn my attention to it; her sails took my attention, and not her hull.

Q. Are there bulwarks around the main deck?

A. Yes, sir; about four feet high; I was standing on the deck itself.

Q. Do you know how the steamer was heading by the compass at the time of the collision?

A. No, sir; I did not know at the time; my judgment at the time was that she had fell off about two points and a half from the sails being becalmed.

Q. Can you tell how far ahead the steamer must go so as to reduce her speed from 12 miles to 1 mile an hour with the engines backed?

A. No, sir.

Q. Did you remain at the same position at the fore rigging from the time you returned to it until the vessels came in contact?

A. I did, sir.

Q. Was anybody else near you?

A. Several persons; could not tell who exactly.

Q. Where was Capt. Nye when the light was reported?

A. In his room, I believe, on the main deck, starboard side.

Q. What was the nearest way to get from his room to the paddle-box?

A. He goes out of his room on the main deck, then goes up a ladder to the hurricane deck; that is about 25 feet from the after end of the paddle-box.

Q. Were the engines stopped when you started to return to the fore rigging?

A. I can't say, sir.

Q. Why can't you say?

A. Because my attention was not drawn to the engines.

Q. Did you hear any cries or halloos from the brig after the collision?

A. No, sir.

Q. What damage was done to the brig?

A. I could not say, sir.

Q. What repairs were put on the Pacific when she got home?

A. I can't say; some planks, &c., by Mr. Brown, the builder.

Direct resumed.

Q. How high is the topgallant forecastle above the deck?

A. Four feet, I should imagine.

Q. Suppose the brig keeping hard away; would any hail to her, if heard, enable them to alter their course so as to avoid the collision?

A. No, sir; mind you, I am speaking from my judgment.

Cross-exam. resumed.

Q. If the brig had continued close hauled on the wind, and the steamer had continued on the course she was on after the order "hard a-starboard" had been given, which side of you would the brig have gone, in your judgment?

A. She would have gone on the starboard side of us, by our stern.

Q. How far would her track have been, in your judgment, from the steamer's stern as she passed?

A. Half her length, sir.

Direct resumed.

Q. Do you mean that if the brig had kept on her course, close hauled, and the steamer had kept on the course she was steering before her helm was starboarded, such would have been the result?

A. If both vessels had continued on their course, both would have gone clear.

Q. Would both vessels have cleared half the length of the brig, in your judgment, without the steamer starboarding her helm at all?

A. I don't think they would have cleared half a length; but I think they would have cleared, and nothing more.

CHARLES TOMPKINS.

Sworn before me, this 8th November, 1851.

JAS. W. HALL,
Com'r of Deeds.

The following deposition of John J. Woodfine is here read, viz:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John J. Woodfine, being duly sworn and examined, as a witness on the part of the New York and Liverpool United States Mail Steamship Company, in the above entitled causes, de bene esse, deposes and says:

I am thirty-two years old; I reside in the city of New York; I am first officer of the steamship Pacific, and expect to sail in her,

from this port for Liverpool, on Saturday next; I have been such first officer since June, 1851; I was first officer on the voyage from New York to Liverpool, commencing Saturday, the 16th of August last; at sundown of that day, the wind was about S. S. W.; it might have been westward of that, perhaps southwest; the "Pacific" was then steering east ½ south; we made the light which turned out to be the light of the brig Alfaretta, about 50 minutes past seven o'clock p. m. of that day; there were stationed at this time on the Pacific's topgallant forecastle, William Ashbridge as look-out on the starboard bow, and Francis Faircloth as look-out on the larboard bow; Charles Tompkins, boatswain, on the main deck forward of the foremast; I was stationed between the two paddle-boxes upon the hurricane deck; George Hutchinson, 3d officer, was stationed aft, just forward of the wheel-house; James Phillips was at the wheel; Capt. Nye was about the deck somewhere; he may have been in the cabin, but he was on deck before and at the time of the collision, on the top of the paddle-box; half of the ship's company were also on deck attending to duty; it was my watch, which was the larboard watch on deck; before the collision we set our lights; we set them at sundown; we set a large bright white light at the foremast head, a red one on the larboard paddle-box, and a green one on the starboard paddle-box; these lights continued set in this manner at the time of the collision.

The first that I became aware of the light of the brig was from hearing William Ashbridge, on the starboard bow, singing out "light ho! on the starboard bow;" I looked that way and saw it immediately, myself; I noticed its direction from the ship, but could not perceive that it moved either way; I should think that at this time the wind was blowing about an eight-knot breeze; I then immediately stepped towards the paddle-box to go upon it, when Mr. Tompkins came aft and asked me if I saw the light; I told him, "I do, all right;" as soon as I saw the light, I sung out "starboard the helm;" I then stepped towards the paddle-box and saw Mr. Tompkins as above stated; my order to starboard the helm was immediately obeyed, and the ship immediately began to swing off to port; immediately after Tompkins spoke to me I went upon the paddle-box, and then repeated the order to put the helm hard a-starboard; the answer from the officer at the wheel was, "hard to starboard;" this brought Capt. Nye immediately upon the paddle-box, side of me, who also immediately repeated the order, "hard to starboard," and then at once said, "the vessel will be into us—stop her, stop her;" this was immediately after he had sung out, "hard to starboard;" we had then swung off, I should think, about three points to port; the order to stop the vessel was obeyed immediately; she was stopped and backed—that is, the engine was stopped and *reserved*; the steamer was under great headway; the engine had been stopped and *reserved* before the collision.

Q. Describe how the brig headed at the time she struck.

A. I think she must have been heading north to north-north-east, or nearly before the wind.

Q. Describe the manner of the collision.

A. Her jib-boom struck first just forward of our foremast, about thirty feet abaft our cat-head, which brought her port bow in collision with and under our starboard wheel, her fore-yard taking the top of our paddle-box; we going through the water, and the wheel backing at the time, cut off the brig's anchor and threw it up, and hooked it on the forward guard-brace, breaking the outer and second rim and some half dozen buckets of our wheel, and so crippled the wheel that we had to stop the engine and could not work it. We had passed over the brig's bow at this time, and cut her down, and she then drifted astern, her foremast and bowsprit, and everything, all gone forward.

Q. How did the brig's light bear when you first made it?

A. Two points and a half on the starboard bow.

Q. Supposing the brig to have been close-hauled as the wind was, and kept her course, would she have gone clear of you or not?

A. Yes, she would have gone clear of us without our altering our course at all.

Q. Suppose, instead of starboarding you had ported your helm, what would have been the effect?

A. I believe we should have come head on and run square over him.

Q. What in your opinion was the cause of the collision?

A. The cause was the brig's putting her helm hard up, and keeping hard off before the wind, instead of keeping her course.

Q. Would the brig's keeping hard off make her course to cross the track of the steamer?

A. Yes, sir, it would bring her right athwart our course.

Q. About how many knots was the steamer going when you first saw the light?

A. She was logging twelve miles.

Q. After the collision what was done?

A. A boat was sent to the brig by the capt. under the command of Mr. Hutchinson, 3d officer, to see what damages had been done to the brig; she returned with four men and the cook of the brig. I afterwards went to the brig in the same boat. I went aboard of her; I found them cutting away the mast, and had to wait perhaps ten minutes before the mast fell so that I could get alongside; and while so waiting in the boat with the brig's crew, I asked them in general, and the man who said he was at the wheel (who was a foreigner named Bernice), what they were all doing aboard of the brig at the time they came into us. Bernice told me that he was at the wheel at the time, and that the rest of the crew were about

the deck; that he put his helm hard up; he could not tell which way the steamer was going. I suppose this is all you want.

[Objected to.]

Q. At that time was anything said by Bernice as to his being confused by the lights of the steamer?

A. Yes; he said he was so frightened that he thought the steamer was going to run right over the top of her; that the lights were so bright he did not know but the steamer would run right over her; this was said loud enough to have been heard by the others in the boat.

Q. Afterwards, on the passage to Liverpool, did you hear any conversation by him as to this matter?

A. None by him personally.

Q. Did you hear anything said by the other men belonging to the brig?

A. No, sir, nothing from the men, but I did from the captain.

Q. What did the captain say?

A. He told me if had not put his helm the wrong way he would have gone all clear.

Q. How did this conversation of the captain come about?

A. We were talking about the weather, and then got in conversation about his brig; he told me when he first saw us he could not tell which way we were going, and he got so frightened just before we struck him that he did not know what to do.

Q. When you got aboard of the brig what was the condition of her boats?

A. I asked the capt. why he wanted one of our boats; he told me that his was stove, and unseaworthy, and was so when he left port; he told me he had two boats, and neither would float.

Q. While aboard the brig, did the capt. say anything about the lights of the steamer?

A. I don't recollect having any conversation with him about the lights, or anything except about the boats, and whether he intended to abandon her or not.

Q. With the wind S. S. west, allowing for the variation of the compass, what would have been the course of the brig close hauled, supposing her to lie six points of the wind?

A. West nine degrees south.

Q. How far were you from Long Island shore when the collision occurred?

A. Without referring to the log-book, from the course we were running, and the distance we had run, I should think about fifteen or twenty miles.

Q. Does the Pacific answer her helm quick?

A. Yes, very quick; much quicker than a sailing vessel of her tonnage.

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Q. How long were you detained at the time of the collision?

A. At the time we stopped for repairing for about three hours or more; we had to stop two or three times afterwards from thirty to forty minutes to make further repairs occasioned by the collision; I was a ship-master five years before going on board a steam vessel.

Being cross-examined—

Have followed the seas since 1832; I have been attached to steamships; I was six months on board the *Jenessee*, and on the Pacific ocean; was attached to the Golden Gate in fitting her out; did not go to sea in her; and have served in the Pacific since June last; I went out to Cuba in a ferry-boat; this is my experience in steamships; this collision was on my 2d voyage in the Pacific from New York.

Q. What was the state of the sea on the afternoon and evening of the collision?

A. What we term a smooth sea.

Q. How long after the steamer's lights were set was the brig's light reported?

A. From an hour to an hour and a half; my watch was from 6 to 8 o'clock; the second officer's watch, or starboard watch, comes on at 8 o'clock.

Q. Did you look at the compass after sundown, and before the collision?

A. Yes, sir; I looked at the compass at seven o'clock; that is the only time I looked at it; the ship was then heading by the compass east half south.

Q. Could the course of the steamship have been changed one or two points without your knowing it?

A. No, sir, not half a point; the course of the ship was not changed from the time I looked at the compass until the order was given to starboard.

Q. What were you engaged in doing when and just before the brig's light was reported?

A. Walking at my station athwart ship, on the hurricane-deck between the paddle-boxes.

Q. How far ahead could you see an object without a light at the time the light was reported?

A. An object without a light could have been seen about three miles off; there was light enough to have seen an object three miles off; from my position I could not see an object ahead of us, because the signal sails of the steamer were set; by getting up on the paddle-box, I could then see ahead.

Q. Was not the night too dark at that time to see a vessel three miles off without a light?

A. I am sure you could distinguish an object at that distance; I could not tell at that distance what the object was, but it could be seen at three miles.

Q. Could you, from your position, see the look-outs on the forecastle without going on the paddle-box?

A. I could see the weather look-out occasionally as he passed back and forth; could not see the larboard look-out; I could see the boatswain, and he was on the main deck, forward of the foremast.

Q. What sails had the steamer set at the time?

A. All her square-sails, topmast and lower studding-sails, on the starboard side, braced well forward.

Q. Did Capt. Nye go to the wheel-house after the brig's light was reported before he came to the paddle-box?

A. No, sir, not to my knowledge; you can't get into the wheel-house from the hurricane-deck without going on the main deck; the wheel-house is chock aft.

Q. When was the engine first stopped?

A. Just before the collision—just before or at the time of the collision; the whole of it happened inside of five minutes; I should think so; that is as nearly as I can guess at the time from the time the light was reported.

Q. Were there any passengers on deck at the time?

A. Yes, sir, a number of passengers were about decks; I could not give the names of any of them.

Q. When the light was reported what did you first do?

A. I ordered the wheel to be put to starboard.

Q. Did the man at the helm answer this order?

A. No, sir; Mr. Hutchinson, the officer of the deck aft, answered me; he was on the hurricane deck aft, by the wheel-house.

Q. Were any other orders given after the light was reported except those you have already mentioned?

A. Yes, sir; after I ordered the helm "starboard" I went on the top of the paddle-box and ordered the wheel to be put "hard a-starboard;" Captain Nye himself gave the next order, which was "Hard a-starboard—stop her;" the next order was, "Stop her, back her."

Q. How far beyond the brig did the steamer pass after the collision before she stopped?

A. That question I cannot answer, as to how far the steamer drifted away from her.

Q. How far beyond the brig did the steamer pass before she commenced drifting?

A. I suppose about half a mile—not so but that we could hear them halloo quite plain.

Q. Judging from the distance you went in the boat going to the brig, how far did the steamer then lie from the brig?

A. When I went in the boat it was an hour afterwards; the steamer had drifted, and I should judge it was two miles or over.

Q. When you first saw the brig's light, could you see her sails so as to know whether she was close hauled or not?

A. No, sir.

Q. When on the top of the paddle-box what was your opportunity of seeing the brig compared with that of the look-out forward?

A. Being highly elevated, I could see better than he could.

Q. Is it not your experience that on board of a steamship under full headway, it is not possible to tell accurately the direction of the wind?

A. No, I think I can tell accurately; the velocity produced by the engine would not prevent my telling.

Q. When you say the breeze at this time was an eight-knot breeze, what do you mean by that?

A. I mean that a good smart sailing vessel, going free with all sails set, would make eight knots an hour.

Q. Could you tell at the time how many points the ship swung off when you first ordered the helm a-starboard? if so, state.

A. From the time I first ordered the helm starboard up to the order hard starboard, she swung off one point, perhaps not so much. The engine was not stopped or slowed until Capt. Nye came on the paddle-box; it was never slowed; it was stopped.

Q. Could you not tell, when you saw the brig's light, whether or not it was moving across your track?

A. No, sir; it appeared to me stationary when I saw it; I did not lose sight of the light at any time after I first saw it; I first lost sight of the light as the collision took place.

Q. Did you hail the brig before the collision?

A. No, sir.

Q. Why not?

A. If I did, they could not hear me.

Q. How long before the collision was it that the wheels were backed?

A. Just about the time the collision took place.

Q. Did you see which way the brig was heading when the wheels were backed?

A. Yes, sir.

Q. How long before that were you able to tell which way the brig was heading?

A. It could not have been more than a minute; I don't know that it could have been as much as that.

Q. When did you first notice that the brig was close hauled?

A. I don't know whether she was close hauled or not; I could not tell whether she was close hauled or not, and only know from what the brig's crew said. When I first saw the brig, to know which way she was going, she was going in a direction opposite to that of the Pacific.

Q. Give their respective courses at this particular time?

A. At that time the steamer was going east half north, and she must have been going west half south.

Q. how long after this did the collision take place?

A. About half a minute; not over a half minute.

Q. Was this before or after you gave the order "hard a-starboard?"

A. This was after I had given the order "starboard," but before I had given the order "hard starboard."

Q. Did not the jib-boom of the brig strike the steamer just about the cat-heads?

A. No, sir; not within 30 feet of it.

Q. What particular damage was done to that part of the steamer which the brig's jib-boom first struck? state particularly.

A. A small piece of the moulding was taken out—that is all the jib-boom did; the bowsprit then came up to the side of the steamer, and bruised her planks and knocked off the paint along; the bowsprit dragged along aft; did not do much damage to the steamer's side; the bows of the brig being in collision with the wheel, broke off the outer and second rim, and several of the paddles and wheel-arms.

Q. Were you on the paddle-box at the very time the brig and steamer came in contact?

A. Yes, sir, at that moment; but I jumped off to keep from being knocked off by the fore yard of the brig.

Q. Suppose that you had ported your helm so as to have changed the steamer's course one or two points to the southward, would you have come into collision with the brig, assuming that she was close hauled, sailing on the wind, and that she had not changed her course?

A. Yes, sir, we *could* have had to have changed our course two points to the southward, in order to touch her at all.

Q. How would it have been necessary to change your course to have gone astern of her?

A. We could not have gone astern of her—it is impossible; she was so far south of our track when the light was first seen, that we could not have got to the southward of her.

Q. How far distant, in your judgment, was the brig when her light was reported?

A. I should think about three miles.

Q. Was it as much as that?

A. It was not as much—it was over two miles—I have no doubt at all it was over two miles.

Q. When you said that if the brig had kept her course she might have cleared you, what did you estimate her velocity to be?

A. I should think she was going five or six knots; it might have been more or less.

Q. Suppose the brig was close hauled and had kept her course, and you had ordered your helm a-port instead of a-starboard when you first saw the light, what would have been the result?

A. We should have run right square over.

Q. Could you, from the steamer, see the man at the brig's wheel at any time before or at the time of the collision?

A. We could not distinguish a person on board of her.

Q. Did you see the brig change her course at any time before the collision?

A. Yes, sir.

Q. When?

A. Just before the collision—I mean immediately before it; I did not see her change her course before.

Q. Had not the jib-boom just touched the steamer at the time you saw the brig change her course?

A. I saw her change her course before the jib-boom touched; I should think the brig might have been twice the length of the ship off.

Question. You say the Pacific minds her helm easily; how far ahead would she go, her speed being 12 knots an hour, before she could be made to diverge from her direct track three points?

A. The moment the wheel is moved she begins to pay off; she would go about her own length before her stern would be off the direct track; going at this speed, the steamer could change her course so as to bring it at right-angles to her original track in going twice her length—I mean that if she was sailing at that speed directly on a ledge of rocks, at right-angles or perpendicular to it, she would require twice her length ahead, in order to bring her course as changed at right-angles to her original course, and then in such case the broadside of the ship would be close alongside of the ledge of rocks, but so as to clear them.

Q. What was the course of the Pacific when the engine was stopped?

A. About east by north, or half north, or in the neighborhood of that.

Q. What was the course of the brig before you saw any change in her course?

A. I should suppose it was in the neighborhood of west—it may have been northerly of west.

Q. Was the wind stronger or lighter at the time of the collision than it was at sundown?

A. It was stronger.

Q. How do you judge what the course of the brig was? Was it by compass or from your inference as to your own track, or as to the direction in which you suppose the wind to have been?

A. From knowing which way the Pacific was going, exactly.

Q. How long before the collision had you last looked at the compass?

A. About an hour—between fifty and sixty minutes.

Q. What was the course of the Pacific at the time of the collision?

A. She headed at the time east-northeast, or thereabouts; she was making an east-northeast course at the time of the collision; her given course at that time was east half south.

Q. Did you observe the brig's course before Captain Nye came to you?

A. Yes, sir.

Q. Was any protest made on the part of the Pacific?

A. Yes, sir, in Liverpool; I signed it; William Ashbridge, Mr. Hutchinson, Tompkins, the boatswain, and the quartermaster; nobody else, I believe; I don't recollect anybody else.

Q. Suppose the Pacific had kept her course, what would have been the result, assuming that the brig kept hers, and that she was sailing close-hauled on the wind?

A. We should have gone all clear of each other; we should have gone to the northward, and she would have gone to the southward.

Q. Does the statement you have given as to the heading of the Pacific, the course of the brig, and the other particulars of the collision, correspond with your entries on the log-book?

Answer. I don't recollect whether they do or not; I never made any entry in the log-book as to the brig's course, to my knowledge; I made all the entries in the log-book.

Question. On what tack was the brig at the time of the collision?

A. She had her larboard tacks aboard, and would have been on the larboard tack had she kept her course.

Q. Describe the manner in which the brig's fore yard damaged the paddle-box.

A. The larboard fore yard-arm went through the top of the paddle-box.

Q. Has Capt. Nye found any fault with you or the look-out with regard to this accident?

A. Never, sir.

Q. How was the Pacific headed after the collision, and what was done with her sails?

A. She was hove to under all her sails, except the studding-sails, which we took in.

Direct resumed.

Q. On what tack was the Pacific at the time the light was first made?

A. The starboard tack.

The *dis*position having been read over to the witness, he desires to say that, probably, he might not have been able at the time of

the collision to have seen an object, without a light, quite as far as three miles ahead.

Question by the Counsel for Rumball.

Q. Did you hear any hail from the brig, or any voices?
A. No, sir, not till after the collision.

J. J. WOODFINE, 1*st Officer.*

Sworn to before me, this 7th day of November, 1851.

WLLIAM DODGE,
Com'r of Deeds.

The deposition of James Phillips is here read, and is as follows:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

James Phillips, a witness sworn and examined de bene esse on the part of the Steamship Company in the above entitled actions, deposes and says: I was quartermaster on board the steamship Pacific, on her voyage from this port to Liverpool in August last, when a collision took place between her and the brig Alfaretta; I was at the wheel at the time; I went to the wheel at 6 o'clock p. m.; I had the wheel from six to eight o'clock; the lights were not set, as I am aware of; when I went to the wheel it was not quite dark; I did not notice when they were set; I did not see our lights; I could not see them from my position; I was in the wheel-house, chock aft, and could see the backs of the lamps in their places, but could not see the lights, as the backs of the lamps were towards me and were blind; I think the lights had been set about an hour and a half before the collision; they were getting them ready when I took the wheel; there was an officer to "con" the ship: that is, to stand over the quartermaster and watch the steering; the officer over me was Mr. Hutchinson, the 3d officer; when I took the wheel the course given me was east half south; I got this course from the man I relieved, and also from the captain; I got it from the captain after I relieved the man and just before the collision took place. The next order given was by the 3d officer, (Hutchinson,) to starboard helm; I obeyed that order. I was in the act of putting the helm starboard, when I received the order "hard a-starboard;" I had the wheel a little more than half up from midship, when I heard the order "hard starboard." Upon receiving the last order, I immediately put the helm up; I did not stop until I got it up; I saw the brig's light after I had got the helm hard up; the steamer was swinging off from the light at the time I saw it; the steamer had swung off two points, or rather more, when the collision took place; I did not hear the brig's light reported from the look-out; I don't know the direction of the wind; I was closed up, with only a front window open; it was from two to four

minutes after the order was given, "hard a-starboard," before the collision; I never stopped starboarding the helm, but kept on until it was hard a-starboard. I can't describe how the brig came into us; the crew of the brig came aboard of the steamer after the collision.

Q. Do you know the man who was, or who said he was at the wheel of the brig?

[Objected to.]

A. I know the man who said he was at the wheel; he told me during the voyage that he was at the wheel.

Q. [Objected to.] State all that he said to you in reference to his navigating the brig, how he put his helm, and about the lights of the steamer.

[Objected to.]

A. He did not say anything to me about the lights; he told me that he put his helm up and kept the brig away off the wind. I told him that if he had not done so we should have gone clear of him; he said he hardly knew what would be for the best at the time; this was all the conversation he and I had about it.

Q. What was the name of that man?

A. I don't know his name; I should not know it if I were to hear it; he was a Portuguese or Spaniard.

Q. When was this conversation?

A. It was during the passage to Liverpool; I did not hear any of the other men of the brig talk about the collision.

Being cross-examined—

Q. Did you not this morning say to one of the counsel here that your course was not given to you before you took the wheel?

A. The counsel asked me whether the course was given to me before I took the wheel, and I told him that I did not exactly recollect.

Q. Have you, since you made this answer, had any conversation with the mate of the Pacific on this subject?

A. No, sir, not about the course.

Q. What conversation did you have, if any, with the mate since then about this case?

A. Nothing of any consequence.

Q. Who gave you the course?

A. The man I relieved was Thomas Owens.

Q. Was the course he gave you the same course which Capt. Nye afterwards gave you?

A. Capt. Nye gave me no other course; Capt. Nye was on the hurricane deck when he gave me the course; can't tell where he went.

Q. Did Capt. Nye ask you before he gave you the course what course you were steering?

A. Yes.

Q. What did you tell him?

A. East half south.

Q. What did he say?

A. Nothing.

Q. Did Capt. Nye say anything more than simply to ask what course you were on?

A. No, sir; Capt. Nye could see, from where he was standing at the time, the compass on the hurricane deck, and could tell whether I was on the right course or not.

Q. Did the Portuguese of whom you have spoken say anything about his being alarmed or frightened?

A. No, sir; he said only he did not know what was for the best.

Q. How many days was it after the collision that you had the conversation with the Portuguese?

A. Can't say; it was on the passage; it was not the next day.

Q. Who was present?

A. Only him and myself.

Q. Where was it?

A. Sitting in the lamp-house.

Direct resumed.

I mean, by saying that Capt. Nye gave me the course, that he asked me what course I was steering.

JAMES PHILLIPS.

Sworn before me this 7th November, 1851.

WILLIAM DODGE,
Com'r of Deeds.

The deposition of William Ashbridge, seaman on "Pacific," (look-out) is here read, and is as follows, viz:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

William Ashbridge, being duly sworn and examined as a witness de bene esse on the part of the Steamship Company in the above entitled action, says:

I have followed the sea 14 years; I was seaman on board the Pacific on her voyage to Liverpool in August last, at the time of the collision with the brig Alfaretta; I had been aboard the Pacific four voyages before; this was the fifth, I believe; I was stationed on the night of the collision on the forecastle hatch, on the starboard bow, as look-out; I went on my station at 6 o'clock p. m.; Francis Faircloth went on the larboard bow at the same time as

look-out; I can't say whether the steamer's lights were set at six o'clock; they were set before the collision, about half an hour before; I saw them then; they might have been set before; the wind was blowing from the southward; I saw a light two points and a half on our starboard bow; I sung out, "a light two points and a half on our starboard bow;" the boatswain answered me and sung out, "all right;" the boatswain then went aft, and shortly after I saw the steamer swinging off with the a-starboard helm; the brig came within about three lengths of herself from the steamer; I heard them on board the brig sing out, "hard a-port;" that is all that I saw then until she ran into us.

Q. Describe how she came into you?

A. She came bow on; she headed, as near as I could judge, about north; I had no compass.

Q. What did you understand by the order aboard the brig to hard a-port?

A. To put their helm hard a-port.

Q. Was the brig's helm put hard a-port?

A. It must have been, or she would not have come bow on to us; Francis Faircloth, the look-out, was on the larboard bow of the forecastle all the time; I was on the starboard bow.

Q. Where did the brig strike the Pacific first?

A. About ten feet before the foremast; I saw no place else, and that is as near as I can judge; I suppose it was the brig's stern that came in there.

Q. Suppose the brig had not ported the helm, she having been close hauled, what would have been the consequence as to the collision?

A. Well, sir, I think the brig would have went clear, and no harm to either of us; after the collision, the brig's crew came aboard of us, and went with us to Liverpool; I never became acquainted with the man who was at the helm of the brig; I never spoke a word with him.

Q. Did you hear any of the crew of the brig speak or talk about the cause of the collision?

[Objected to.]

A. Yes, sir; I heard our crew and the brig's talking together about the brig having parted her helm; I cannot specify any of the individuals.

Q. What did the crew of the brig say in respect to the brig's porting her helm?

A. I never heard them say any thing else, what it would have done or what it would not; I never was in conversation with them; I think I was relieved from being look-out that evening about half-past 10 or eleven o'clock; in my judgment it was about four or five minutes after I discovered the light before the collision took place.

Q. Describe particularly the appearance of the brig's light when you first saw it as to being stationary or moving?

A. The light was moving a little when I first saw it; it was going in an upward motion, and I suppose a man was carrying it up; this upward motion was the only motion I observed. The Pacific was not on any tack; she was running about two points free.

Being cross-examined—

I am still in the employ of the Pacific, and am going to Liverpool in her as seaman; I was about one foot abaft, about two feet aft, and over on the starboard side.

Q. What did you do when the brig struck?

A. I still remained there; just before the brig struck us, I left the topgallant forecastle and went on the main deck.

Q. Why did you do that?

A. Because, sir, I was so much put out of the way, seeing that the brig was coming into us; I was so alarmed.

Q. Did you hear the first officer order the helm a-starboard?

A. No, sir; I was still on the topgallant forecastle.

Q. Did you hear the mate order the helm "hard a-starboard?"

A. No, sir; I did not hear him at all; I did not hear any order from captain; I did not hear any order on board the Pacific before the collision.

Q. Did you see the brig when the vessels came in contact?

A. Yes, sir.

Q. Where were you then?

A. I was on the main deck about ten feet forward of the foremast, close over on the larboard side.

Q. How far off was the brig, in your judgment, when you left the forecastle?

A. About the length of herself.

Q. In what position were her sails?

A. Her sails were braced sharp up; the larboard tacks aboard, as I could judge.

Q. Did you at the time observe the brig's sails so as to know that they were braced sharp forwards?

A. Yes, sir; I could not say whether they were braced sharp up, or a little checked.

Q. What did Faircloth do when you left the forecastle?

A. I could not say what he did.

Q. When did you last see Faircloth before you left the forecastle?

A. I could not say whether he was on the forecastle then or not; I do not look to the larboard bow.

Q. How was the brig heading when she first came in sight so that you could judge?

A. I can't say how many points; I must judge for that now; she

was heading to the westward; I had not looked at any compass; the compass is away aft.

Q. What did the boatswain (Tompkins) do when you reported the light?

A. He said, "Aye, aye," and went aft instantly.

Q. Was the breeze lighter or stronger at the time of the collision than at sundown?

A. I did not take notice; I think it was a seven or eight knot breeze.

Q. How far below the main deck was it that the brig's jib-boom came in contact with the steamer?

A. I don't know any thing about the jib-boom; I did not see the jib-boom; I did not see the jib-boom strike the steamer.

Q. Did you actually see the brig's bow come in contact with the steamer?

A. I was on the larboard side, sir, and I saw the brig when she was into us.

Q. Could you from the larboard side of the Pacific see the brig's bows at the exact time the vessels came in contact?

A. I could see her head yards and foremast; I could not see her bow.

Q. Could you see the brig's fore yard at the time the vessels came in contact?

A. Yes; I saw the larboard yard-arm.

Q. Why could you not see the fore yard *are* when it came in contact with the paddle-box?

A. I was on the wrong side of the steamer for it.

Q. Where was the brig's light placed?

A. I can't say where it was placed.

Q. How high was it from the deck?

A. I judged about six or eight feet.

Q. Could you see any of the brig's crew before the collision?

A. No, sir.

Q. Did you, or any one of the steamer, hail the brig?

A. No, sir, not as I am aware of.

Q. Why not?

A. I did not hail, because it is not my place.

Q. Were you excited or alarmed at the prospect of the collision?

A. Yes, sir, I was alarmed a little.

Q. Did you look to the larboard bow when you reported the light, to see that Faircloth was there?

A. After I saw the light, I saw Faircloth on the larboard bow; he was walking backwards and forwards, fore and aft.

Q. What had you been doing just before you reported the light?

A. Nothing, much, but standing in the same condition I have stated before; I had been standing still some time before.

Q. Had any passengers been on the forecastle just about the time the light was reported?

A. Yes, sir; there had been some there during the night, a long while before the collision.

I don't think the light was reported while they were there.

Q. Did you say any thing about the light to Faircloth, or to anybody near you?

A. No, sir.

Q. Do you mean that you made no remark whatever to anybody after you saw the light, and before you left the forecastle?

A. When I saw the light I reported it, and had no conversation whatever with anybody afterwards before I left the forecastle; had no conversation with any of these passengers.

Q. Were any new timbers or plank put on the Pacific at Liverpool?

A. Yes, sir, there were some carpenters there working; I don't know what they were doing; they were repairing her side; I don't know what was put on her there.

Direct resumed.

Q. When you left the forecastle, how close was the brig?

A. Just the length of herself.

On having this deposition read over to him, the witness desires to say that he was, when the light of the brig was reported, on the forecastle-head, and not on the forecastle-hatch.

his
W. ⋈ ASHBRIDGE.
mark.

Sworn before me, this 7th day of November, 1851.

WILLIAM DODGE,
Com'r of Deeds.

The deposition of George W. Hutchinson, 3d mate of the steamship Pacific, is here read, and is as follows, viz:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

George W. Hutchinson, being duly sworn and examined, de bene esse, on the part of the Steamship Company, deposes and says: I was third officer on board of the Pacific on her voyage to Liverpool in August last, when the collision occurred between her and the brig Alfaretta. My station at that time was between the compass, forward of the mizenmast, and the man at the wheel. My duty is to see that the vessel is steered straight. I took my position at six o'clock and would end at 8 o'clock; but I was up that night until 11 o'clock. James Phillips was at the wheel; he took his station there when I took mine. At the time he took the wheel,

and I took my station, the steamer's course was east half south. There was no change in this course until orders were given to starboard the helm. These orders were given by the first officer; the order was obeyed immediately. Within about a minute of the former order another order was given by the captain and Mr. Woodfine to "hard a-starboard;" I replied that the helm was "hard a-starboard. The vessel did swing off, so that when we struck she was heading about east-northeast.

Q. At or about the time the order was given to "hard a-starboard," did you hear any order or signal given for stopping the engine?

A. Directly after I heard the order to "hard a-starboard" I heard the bell ring to stop the engine. I immediately looked over the weather side of the steamer and saw that the wheels were stopped. I looked down and saw that they were stopped, and between a minute or two minutes the collision occurred. I did not look at a watch; I have to guess at the time. Before the collision occurred I saw the brig's light about two points on our starboard bow; I did not keep my eye upon it to see it was moving. After the collision a boat was cleared away and I went in her, with five men, to the brig. I went alongside of the brig and first spoke to the captain, and asked him what he was going to do.

Q. Had you at that time any conversation with the man at the wheel of the brig when the collision occurred; if so, state the same.

A. (Objected to). I had no conversation with the man at the wheel until after he came into my boat; he then told me that the captain was standing in the companion-way, and that he told him that he had better put the brig's helm "hard up." The captain said no, she would go all clear; but he said he did put the helm up. I had no other conversation with him on the subject.

I have been aboard the Pacific near six months; I have followed the sea sixteen years; I am 27 years old; I reside at 71 Oliver st.; I expect to leave here in the Pacific to-morrow.

Being cross-examined—

Q. Did you hear the light reported?

A. I did.

Q. Did you first see the brig's light before or after the order was given to "starboard the helm?"

A. Before. When I saw the light first I was standing about three feet on the larboard side of the mizenmast. When I heard the light reported I was walking on the starboard side between the mizenmast and the man at the wheel; it is about 20 or 30 feet from the mizenmast to the wheel-house. I can't say whether I was walking forward or aft when the light was reported. I could not see the light from where I was walking on account of the paddle-box being in the way.

Q. Where were you standing when you heard the order to "star board the helm?"

A. I was standing by the compass, between the mizenmast and the binnacle.

Q. Did you stay in that position until the order was given "hard a-starboard?

A. I did, or somewhere thereabouts.

Q. Were you there in the same position when Captain Nye himself gave the order "hard a-starboard?"

A. I was, sir. Both Mr. Woodfine and the captain gave the order "hard a-starboard" almost at the same time.

Q. Did you see the brig after the order "hard a-starboard," and before the collision?

A. No, sir.

Q. *Wh*ere the wheels in motion when you looked over the ship's side?

A. They were stopped.

Q. Where are the bells to signalize the engineer what to do?

A. The handles of them are on the hurricane deck. The side of each paddle-box is furnished with a set of bells—one to slow, one to stop—one to back, one to go ahead—and one to hook on, or to go ahead for good.

Q. What appeared to be the condition of the master and crew of the brig when you got alongside her in the boat?

A. They appeared to be frightened, scared, and very glad to see the boat come. After the collision, when we got clear of the brig, we could hear them hallooing as if they were frightened, but could not distinguish what they said.

Q. How do you know that the man who spoke to you in your boat was at the helm of the brig?

A. Only because he told me so. I think he was a foreigner—an Italian or a Portuguese. I was the only one of the steamer's men who could have heard what he said at that time; they were pulling, and could not hear.

Q. How far was the Pacific from the brig when you went off in the boat?

A. I should think she was a mile and a half, or two miles. I did not go in the boat the second time.

Q. How was the wind and sea at the time of the collision?

A. It was from the southward and westward.

Q. Did you see Capt. Nye go to the wheel-house just before the collision?

A. I did not see him until I heard him, when he was on the paddle-box with the mate; I heard Capt. Nye sing out, stop her; when I heard him sing out, "hard a-starboard," I heard him sing out, stop her; this was after I saw him on the top of the paddle-box, with the mate.

Q. Are there any other modes of signalizing the engineer from the hurricane deck besides the bell-handles at the paddle-box?

A. No other way except by singing out down the skylight, between the paddle-boxes.

Q. Who rung the bell to stop?

A. Don't know, sir; so dark I could not see.

Q. Could you see any part of the brig when you went to the side of the steamer, and saw the wheels were stopped?

A. No, sir; because the paddle-box was between me and the brig, and I could not see over them.

Q. What was the condition of the brig when you went alongside of her, in the boat?

A. The foremast was hanging over her side; the bowsprit was in the water; did not go on board, and did not see where she was cut down.

Direct.

Q. About what time did the collision occur?

A. It was between half-past seven and eight o'clock; my watch was nearly out.

GEO. W. HUTCHINSON.

Sworn to before me, this 7th day of November, 1851.

W. O. MUMFORD,
Com'r of Deeds.

Endorsed: U. S. dist. court. The N. Y. and Liverpool U. S. Mail Steamship Company vs. Noyes, Wilson and others. Deposition de bene esse.

E. H. OVEN, *Proctor.*

Tuesday, Sept. 20th.

1st cause, Mr. De Forest argues for libellant.
" " Betts " " respd'ts.
Curia advisare vult.

Decree dismissing Libel.

At a stated term of the district court of the United States of America, for the southern district of New York, held the eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-three: Present, the Honorable Samuel R. Betts, district judge.

OTIS P. RUMBALL & al.
vs.
THE STEAMSHIP PACIFIC, her tackle, &c. } 9,371.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due delibera-

tion being had in the premises, it is now ordered, adjudged and decreed, by the court, that the libel in this cause be dismissed, each *part* paying his own costs.

Filed the eleventh day of November, 1853.

District Court of the United States, southern district of New York.

OTIS P. RUMBALL
ag'st
THE STEAMSHIP PACIFIC, her machinery, tackle, apparel, &c., THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY, Claimants.

SIR: The libellant, Otis P. Rumball, intends to appeal from the final decree of the court in this cause.

Dated New York, November 18th, 1853.

Yours, &c.,

WEEKS & DE FOREST,
Libellant's Proctors.

To GEORGE W. MORTON, Esq.,
Clerk District Court.

Endorsed: 9,371. U. S. district court. Otis P. Rumball vs. The Steamship Pacific, her tackle, &c. Notice of Appeal. To Geo. W. Morton, Esq.

Filed Nov. 18th, 1853.

United States Circuit Court, southern district of New York.

OTIS P. RUMBALL, libellant, Appellant,
ag'st
THE STEAMSHIP PACIFIC, her machinery, tackle, apparel, &c., THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY, claimants, Respondents.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit.

The appeal of the above named appellant respectfully showeth, that on or about the twenty-fourth day of September, in the year one thousand eight hundred and fifty-one, the above named libellant, Otis P. Rumball, exhibited his libel in the district court of the United States for the southern district of New York against the steamship Pacific, her machinery, tackle, apparel, &c., in a cause of collision, claiming over fifty dollars, praying, among other

things, for the reasons set forth in said libel, that the said steamship might be condemned and sold to pay the demands of the libellant and costs in said libel mentioned.

That process having been waived, the New York and Liverpool United States Mail Steamship Company, on or about the fifteenth day of October, 1851, filed their claim and answer to the said libel in the office of the clerk of the district court for the southern district of New York, praying, among other things, that the said libel might be dismissed with costs, as by reference to said libel and the said claim and answer may more fully appear.

That the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said district court, on or about the 19th and 20th days of September, 1853, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, on the eleventh day of November, in the year 1853, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the said libel in this cause be dismissed without costs to either party.

And this appellant is advised and insists that the said decree is erroneous, and that the said libel ought not to be dismissed, and that the libellant should have the relief demanded in the libel.

And the appellant, for these reasons, appeals from the whole of the said decree in favor of the respondents, the New York and Liverpool United States Mail Steamship Company, to the next circuit court, to be held in the said district; and on the said appeal the appellant intends to have said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court.

And he prays that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed or such other decree thereon be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellant their costs and damages in the premises.

WEEKS & DE FOREST,
Proctors for Libellants and Appellants.
H. G. DE FOREST, *Advocate.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

William F. Ogilvie, being duly sworn, says, that on the 2d day of December, 1853, he served a copy of the foregoing appeal on E. H. Owen, esq., the proctor for the appellees, by delivering the same to him personally. WILLIAM F. OGILVIE.

Sworn before me, this 3d day of December, 1853.
JOSEPH BRIDGHAM,
U. S. Comm'r.

Endorsed: 9,371. United States circuit court. Otis P. Rumball agst. The Steamship Pacific and Claimants. Petition of appeal.

WEEKS & DE EOREST,
Att'ys Appellants, 58 *Wall st.*

Filed Dec. 3d, 1853.

Bond for Costs.

of the United States of America for the southern district of New York, in the second circuit.

OTIS P. RUMBALL, Libellant and Appellant,
vs.
THE STEAMSHIP "PACIFIC," her tackle, &c., and the N. Y. and Liverpool U. S. Mail Steamship Co., Claimants and Appellees. } On Appeal.

Know all men by these presents, that we, James E. Brett and Henry G. De Forest, are held and firmly bound unto the above named claimants and appellees in the sum of five hundred dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas the above named appellants ha prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES E. BRETT, [L. S.]
H. G. DE FOREST. [L. S.]

Sealed and delivered, and taken and acknowledged, this 5th day of December, 1853, before me.

GEO. W. MORTON,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

James E. Brett and Henry G. De Forest, being duly sworn, depose and say, and each for himself saith, that he is worth the sum

of one thousand dollars, over and above all his just debts and liabilities.

JAMES E. BRETT.
H. G. DE FOREST.

Sworn to this 5th day of December, A. D. 1853, before me.

GEO. W. MORTON,
U. S. Comm'r.

Filed this sixth day of December, 1853.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the sixteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

OTIS P. RUMBALL, Libellant and Appellant,
vs.
THE STEAMSHIP PACIFIC, her tackle, &c., the New York and Liverpool U. S. Mail Steamship Co., Claimant and Appellee.

This cause being called in its order on the calendar—

Mr. De Forest reads the papers from Apostles on the part of the libellant and appellant.

Mr. Cutting reads the papers from the Apostles on the part of the claimant and appellee.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Thursday, the 17th day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

OTIS P. RUMBALL, Liblnt. and Applnt.,
vs.
THE STEAMSHIP "PACIFIC," her tackle, &c., Clmt. and Appellee.

This cause being still on hearing—

Mr. De Forest argues the case on part of lib't.
Mr. Cutting " " " " resp't and app'ee.
Mr. De Forest is heard in reply.
Cur. adv. vult.

1854

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the 30th day of September, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

OTIS P. RUMBALL, Applnt. and Liblnt.,
vs.
THE STEAMSHIP PACIFIC, her machinery, tackle, &c.

This cause coming on to be heard upon the appeal taken by the libellant from the decree of the district court of the United States for the southern district of New York, and upon the pleadings and proofs, and the advocates of the respective parties having been heard, and due deliberation having been thereupon had by the court, it is now ordered and adjudged by this court that the decree of the aforesaid district court dismissing the said libel be, and the same is hereby, in all things reversed. And it is further ordered and adjudged that the libellant in this action do recover against the steamship Pacific, her machinery, tackle, apparel, &c., the damages sustained by the libellant and owners of the brig "Alfaretta" by reason of the collision mentioned in the libel in this action, together with costs in this and the district court, and that it be referred to R. E. Stilwell, esq., U. S. commissioner, to ascertain the amount of such damages, and to report thereon with all convenient speed.

Endorsed: Circuit court of the U. S., S. D. N. Y. Otis P. Rumball, applnt. and liblnt., vs. The Steamship Pacific, her machinery, tackle, &c.

"Dr. decree."

WEEKS & DE FORREST,
Liblnt. Proctor.

Filed Sept. 30, 1856.

Circuit Court of the United States for the southern district of New York.

OTIS P. RUMBALL, Liblnt. and Applnt.,
vs.
THE STEAMSHIP PACIFIC, her tackle, &c.

Notice of Reference.

In conformity with the order entered in the above entitled cause, you will please to take notice, that the reference ordered therein will be proceeded with before me, (a commissioner duly appointed

by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States courts, at No. 9 College Place, in the city of New York, on the sixth day of October, at 9½ o'clock in the forenoon of that day, at which time and place you are hereby notified to attend with the testimony you may have to offer in the matter referred.

Dated New York, the 30th day of Sept., A D. 1857.

Yours, &c.,

R. E. STILWELL,

United States Commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit.

Service of a notice of which within is a copy admitted.
Sept. 30, 1856.

E. H. OWEN.

Monday, Oct. 6, 1856.

OTIS P. RUMBALL, Liblnt. and Applnt., vs. THE STEAMSHIP PACIFIC, her engine, &c. } Reference—R. E. Stilwell, U. S. Com'r.

Mr. De Forrest and Mr. Vose present, on the part of libellant and respdts.

James W. Gallison sworn on the part of the libellant and appellant. I live at Harrington, in the State of Maine; I am a shipmaster, and have been so seven years; I know the brig Alfaretta, when she was built; she hailed from Harrington; Daniel White was her first master; he took her when she was new, and Capt. Otis P. Rumball succeeded him; she was, I think, in 1851 about two years old; can't tell exactly; she was a good-built vessel, about 170 odd tons; she was a fair sailer; I have often been in company with her in port; I have been on board of her frequently before she was run down; I saw her last, before the collision with the Pacific, in Boston; it was some time before, some 5 or 6 months; in my judgment such a vessel would cost about 8 or 9 thousand dollars; I form my judgment from being connected with vessels built at that place.

Q. Please to state what the value of the brig was when you saw her in Boston.

A. I should think from sixty-five hundred to seven thousand dollars; I have seen her since the collision, and have been in company with her two or three voyages to Louisiana; she has been changed to a fore-and-aft schooner; when I saw her in Boston she was having a zinc bottom put on her.

Cross-examined by Mr. Vose on part of Respondent.

The Alfaretta was built of mixed wood—hackmetack, and hard hard woods of the country; she was built better than some they build there. She was called a very well-built vessel; I think she was copper-fastened. She was employed in the winter season in the West India trade, and in the summer coasting. I remember her losing her topmast in a hurricane. I think she was nearly new at the time, about six months old. It was at sea; she put in at St. Thomas. I don't know that she sustained any other injury than losing her topmast. I knew it was her fore topmast. I infer her main topmast must have gone also. I think she was repaired at St. Thomas; it was before she was zincked.

JAS. W. GALLISON.

Sworn to before me this 6th Oct., 1856.

R. E. STILWELL,
U. S. Com'r.

Adjourned to-morrow, the 7th, at 9 o'clock.

Tuesday, 7th Oct., 1856.

Adj. to Friday, the 10th, at 9½, by request of both parties.

Friday, 10th Oct., 1856.

Both sides present, and adj. to Tuesday next, at 9½.

Moses H. Small, a witness examined on behalf of the libellant and appellant in this action, being sworn and examined, saith, that he is a ship-master; has been such for ten years; hails from Millbridge, Maine. I know Otis P. Rumball, and I know the brig Alfaretta; was on board of her several times in Boston and New York, before the collision with the Pacific; was on board of her when Capt. White was master of her. The brig was built, I think, in 1848, at Harrington. Her tonnage was somewhere about 170 tons. I should think she was a very good-built vessel. I never was at sea in company with her. Have seen her since she was repaired and turned into a fore-and-aft schooner. Have not been on board of her since. It would cost about $8,000 to build such a vessel as this. I was connected with vessels building about the time she was built, in Maine. I saw the brig in Boston when Captain White left her and Capt. Rumball took her. I think that this was the first *course* Capt. Rumball went in her when he went from Boston east and took in the lumber for New York, on the voyage when he was run down; I won't be positive. I suppose the fair value of the brig at that time, she being zincked, was $7,000, seven thousand dollars of the wanted to sail her.

Cross-examined.

I did not own any interest in any vessel at the time *the* was built. I had a vessel built in 1851, or thereabouts. The brig Alfaretta was built of the ordinary materials out of which vessels are built there. I have been aboard of her frequently; the last time was at Boston, when Capt. White left her. I think Capt. Rumball purchased her about that time; I don't know what his interest was, nor what he paid for her. The brig was an ordinary model, not a clipper. Capt. Rumball ought to have known her value at the time he purchased. He would be likely to know her value as well as any one.

MOSES W. SMALL.

Sworn to before me this 6th Oct., 1856.

DAN. SEIXAS,
Com. of Deeds.

William H. Merry sworn for libellant. I am inspector of New York Mutual Insurance Co.; have been for 17 years; before that, I was a ship-master sailing out of New York; I have never built a vessel at the east, nor superintended one built there; I was subpœnaed to attend here by Owen & Vose, in behalf of the respondents; I first saw the Alfaretta, I think, after she was built; I cannot recollect whether I saw her after the collision with the Pacific, before she was altered to a schooner; immediately after she was repaired and altered a schooner, I went on board of her and examined her; I then, after this examination, rated her on the insurance book A 2, the same as when she was new, and entered her as a schooner; she had been on our books before, as a brig.

A vessel like the Alfaretta would depreciate fifteen per cent. on her cost in three years; I should say this was so of this vessel, assuming that she was kept in good ordinary repair. It would cost to re-plank a vessel like this, at the outside, one thousand dollars.

The Alfaretta was 163 tons register according to my book; an eastern-built vessel, built in Maine, of mixed timber.

Q. What would be the first cost of building *regupping* such a vessel entire, ready for sea?

A. I would not like to state positively, but according to my judgment, it would be $6,500; I should think that would be the outside.

Q. If the vessel's bottom were worm-eaten after three years' use, would that depreciate her more than 15 per cent. of her original cost?

A. Yes, sir.

Q. How much?

A. It would depend upon the extent; if badly wormed the depreciation would be 30 per cent.

Q. If at the time she was altered into a schooner, you had known that her bottom was wormed, *bur* would you have rated her? [Obj. to.]

A. Certainly not better than A 2½; it would depend upon how badly wormed she was; if she was very badly wormed, I would rate her unseaworthy until she was re-planked; I mean the wormed plank replaced by new.

WM. H. MERRY.

Sworn to before me, this 29 Oct., 1857.

JOSEPH BRIDGHAM,
U. S. Com'r.

We consent that the foregoing deposition be read in evidence by either party before the commissioner, subject to all legal objections, except as to the manner of taking it.

N. Y., Oct. 29, 1856.

OWEN & VOSE,
WEEKS & DE FOREST.

Monday, Oct. 6, 1856.

OTIS P. RUMBALL, Liblnt. and Applnt., vs. THE STEAMSHIP PACIFIC, her engine, &c. } Reference—R. E. Stilwell, Com'r.

Mr. De Forest, present on the part of liblnt. and applnt.

Chas. P. Butler sworn on part of libellant. I am com'r merchant in city of New York, and have been so for the last twelve years; I have been employed much with vessels, in insuring *than*, effecting charters, collecting freights, loading them, and purchasing and selling cargoes and vessels; I know the brig Alfaretta; I saw her in the month of September, A. D. 1851, when she was brought in from sea by a man named Kelly and other pilots; she was dismasted, bowsprit gone, windlass-bits gone, stern stove about four to five feet below the deck, full of water; deck load, apparently of timber, *in lots;* my firm of Simpson, Mayhews & Co. were consignees of her cargo, which was white pine lumber and laths; we were to pay some $367 66 freight for the voyage, and what we did pay.

The vessel was sold at auction; my partner, Geo. W. Simpson, attended the sale; the brig brought $900 at the auction sale; my judgment is, that is full as much as she was worth; I went to see her before the sale for the purpose of seeing how much she was worth; I authorized my partner to bid $500 for her at the sale; as consignee of the cargo, we paid one-half of the gross sales of the cargo to Kelly and others, the salvors; I understood that they also received half the proceeds of the vessel—what she sold for. The expenses of the sale of the brig in this place, including our com-

missions and adventry, *and* would be about ten per cent. on the gross sales.

I knew the brig by reputation before I saw her, when she was brought into New York; the brig was repaired and altered into a fore-and-aft schooner, holding still the same name; I have seen her within the last year.

Q. Can you state what the value of the brig would have been at the time she was brought in, if she had not been damaged in the particulars you noticed?

A. Yes.

Q. Please to state.

A. $7,000, as vessels of her size, condition, and age sold at that time.

Cross-examined.

I do not know who repaired the vessel, nor who purchased her; I don't know by whom she was sold; she was a hermaphrodite brig; I don't know who owned her; I don't, as the vessel was surveyed; the brig had been accustomed to come to this port with cargo; she was one or two years old at the time she was wrecked; she was between 170 and 180 tons; it would cost about $30 a ton at that time to build, without sails, rigging, or spars, or chains and anchors; I think the depreciation of vessels generally, from ordinary wear and tear, assuming that nothing is done to them, would be about 15 per cent. per annum; I understand she was not insured at the time, but I understand she had been previously insured in some eastern office at $6,000 valuation—I heard this from the liblnt., I think. [Obj. to.]

Re-direct.

I do not mean to say that this brig depreciated 15 per cent. per annum; I was speaking of eastern vessels built in whole or mostly of soft wood, and of vessels where no expense was being put on them.

CHAS. P. BUTLER.

Sworn to before me this 6 Oct., 1857.

DAN. SEIXAS,
Com. of Deeds.

Thursday, Oct. 23d, 1856.

OTIS P. RUMBALL, Liblnt. and Applnt., }
vs.
THE STEAMBOAT PACIFIC, and Respondents. }

Mr. Vose for respdt., and Mr. De Forest for liblnt.

Rich'd Morris, sworn on the part of claimants, says: he resides in the city of New York, and he is importer of musical instruments;

I knew the hulk of the brig Alfaretta; I bought it at auction, in connection with Mr. Bennett, in 1851, in New York; I understood at the time that she had been wrecked by a collision with the Pacific; we refitted her, and made a top fore-and-aft schooner of her.

Q. What was her cost to you when thus refitted? [Obj. to.]

A. About $4,400; that included what I paid for her at auction, and her repairs for getting her ready for sea.

Q. Can you tell us briefly what you did to her? [Obj. to.]

A. We had her thoroughly overhauled, and put in two or three deck-beams where the break was, and repaired the part of the deck where it was broken; she had new spars, rigging, and sails; we put her in perfect order to go to sea.

Q. When she was thus repaired and refitted, was she, in your opinion, as good and valuable a vessel as she could have been the day preceding the collision? [Obj. to.]

A. I should think she was.

Q. In what condition did you find her metal?

A. Her bottom was in pretty good order—that is, the zinc; we couldn't tell what was underneath.

Q. Have you ever informed yourself of what was the actual condition of her timbers?

[Obj. to, except as to his personal knowledge.]

A. As far as her timbers were concerned, they were good.

[Com'r instructs the witness that he shall answer only as to his personal knowledge.

The counsel for the claimants insist that the witness's answer shall be taken down. And the witness further says, as to the state of the bottom, I do not know of my own personal knowledge, but I understood that her bottom had been pricked.

The answer excluded.]

Q. What do you mean by pricked?

A. Worm-eaten.

Direct.

I had not seen the vessel at any time before she was wrecked; I owned the vessel about a year; she made two voyages to the West India *which* we owned her; she made about six voyages altogether.

RICH'D MORRIS.

Sworn to before me this 23d day of Oct., 1856.

R. E. STILWELL, *U. S. Com'r.*

Benjamin Bennett sworn on the part of the claimants. I reside in the city of New York; am a sailmaker; have been 14 years in business; I have owned 4 or 5 vessels during that time.

Q. I, in connection with Mr. Morris, bought the hulk of the Alfaratta; we refitted her, as stated by Mr. Morris, as a fore-and-aft schooner; we repaired, overhauled, and put her in perfect order.

Q. What was her cost to you when thus repaired and refitted?

A. From 45 to 4,600 *hundred* dollars; this includes every thing, with the purchase of the hulk. [Obj. to.]

Q. What did you do to her?

A. We recaulked her above her zinc and her decks; also, we put new plank on her bow where she was run into, a new head, and four or five new deck-beams; and we put some carlines in between her deck-beams; we put new decks where they were gone; all new spars; she was all new but her hull; I estimated the carpenter bill, and that included spars—it was $950; sails and rigging were in one bill, and I can't tell how much they amounted to; the bills have been destroyed, and I can't tell; Mr. Morris furnished the deck, and I made, &c.

Q. How would the expense of her sails and rigging compare with the expense of rigging the same vessel as a hermaphrodite brig? [Obj. to.]

A. I suppose it would cost two hundred dollars more to rig her as a hermaphrodite brig; can't tell exactly.

Q. Would the expense of the other work you did upon her have been any more or less, if you had not changed her rig? [Obj. to.]

A. I can't see that it would make any difference.

Q. When she was thus repaired and refitted, was she, in your opinion, as good and valuable a vessel as she could have been the day before the collision? [Obj. to.]

A. I should think she was.

Q. In what condition did you find her metal?

A. Pretty good.

Q. Have you informed yourself of what was the actual condition of her bottom at the time you bought her? [Obj. to.]

A. I can't tell how her bottom was; it was all covered up.

Q. What was the general condition of the vessel when you bought her?

A. She was pretty rough.

Q. What was her condition irrespective of the injury she received by the collision? [Ques. waived.]

Q. Did the vessel then appear to be in a high or low state of repair?

A. Well, I can't tell any thing about it.

Q. Did the portion of the vessel not injured by the collision appear to be in a high or low state of repair? [Obj. to.]

A. Well, I can't tell any thing about that; the schooner was chock full of mud when I seen her; she had been covered all over with muddy water; that is what I mean.

Q. Have you heard of complaints being made by subsequent owners of the vessel that her bottom was pricked? [Obj. to. Obj. disallowed, and libellants counsel excepts.]

A. I have heard of it.

Cross-examined.

I should think we had her a year or 15 months; we then sold her for $3,900; the metal was not taken off her bottom during the time we had her; Robt. H. Felter repaired her for us; she leaked while we had her; we had her up two or three times to find the leak, but couldn't find it; I never saw the vessel until after she was wrecked.

B. BENNETT.

Sworn to before me this 23d Oct., 1856.

R. E. STILWELL, *U. S. Com'r.*

Mr. Vose, counsel for the claimants, asked for an adj. of the reference, and Mr. De Forest objects, and asks for Mr. Vose aff't as to his witnesses.

Adj'd to 24th, at 9½ o'ck.

U. S. Circuit Court.

THE STEAMSHIP PACIFIC
ads.
OTIS P. RUMBALL.

Deposition of Samuel G. Waring, a witness produced, sworn, and examined de bene esse on the part of the claimants, and to be used on the reference in the above entitled action.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Samuel J. Waring, being duly sworn, says: I reside in the city of New York; I am inspector of the Atlantic Mutual Marine Insurance Co.; have been such for 26 years; my duty was, until about 3 years since, personally to examine and survey vessels coming into this port, and to rate them on the books of the company; the rates are, A 1, A 2, A 3, and B; A 1 is the best rate, and indicates that the vessel is of the best quality, seaworthy, and capable of carrying dry cargo to all parts of the world; A 2 indicates a vessel less desirable, but still good vessels and capable of carrying dry goods.

Q. Did you know the brig Alfaratta?

A. I did.

Q. When did you first know her?

A. I first survéyed her in Dec., 1348.

Q. What class of vessel was she?

A. At that time we classed her A 2.

Q. Did you examine her yourself?

A. I examined her myself.

Q. How old was she then?

A. About a year old.

Q. What sort of a vessel was she?

A. She was a plain, cheap-built down-east vessel, built of mixed wood.

Q. What could have been the cost of constructing such a vessel in 1847, completed ready for sea?

A. I think about $7,000.

Q. What, in your opinion, was the Alfaratta worth in the summer of 1851? [Objected to.]

A. I think she had depreciated about half, and was probably worth from $3,500 to four thousand dollars; her value would depend upon the condition of her sails and rigging; what, I do not now recollect.

Q. Do you mean that the depreciation would have been one-half of her sails and rigging were in a bad condition?

A. I mean that the depreciation would have been one-half, if her sails and rigging were in the ordinary and common way; if the sails and rigging had been new, I should value her at $4,000.

Q. To what age does an eastern-built vessel, such as the Alfaratta, last, fit for sea?

A. From five to ten years.

Q. Do you mean not more than ten?

A. Very seldom more than 10 years, to be considered seaworthy.

Q. Did you see the Alfaratte in '51?

A. Yes, sir.

Q. Do you value her at the price you have named, upon your recollection of her?

A. No; I value her partly upon my recollection, but more particularly upon the memoranda I then made relative to her quality and standing.

Cross-examined.

Q. Can you, independently of the memoranda you made, recollect what the condition of the Alfaratta was when you saw her in 1848?

A. No, sir, I can't.

Q. In estimating the depreciation of the Alfaratta in 1851, as you have on your direct, did you assume that she was coppered or zincked?

A. I see that my memorandum says that she was zincked in 1851; I consequently took that into consideration on estimating her depreciation.

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Q. Have you ever built a vessel at the eastward or superintended one there?

A. I have, at Kesport, Portland, in the year 1817 or 1818.

Q. Have you built one there since?

No, sir.

Q. How much, in your judgment, would it cost to re-plank the bottom of the Alfaratta, in the State of Maine?

A. That would depend on the kind of plank, and the manner in which the work was done.

Q. Suppose the plank and work to be similar in quality and kind to those originally put on her, what would it cost?

A. Can't answer that question, because I don't know what facilities they have in the particular port of Maine that you refer to.

(The witness is instructed that the counsel refers to the State of Maine in general, and not any particular part of it.)

Q. And the last ques. is repeated.

A. In consequence of not being able to imagine what facilities there are for hauling vessels out of water in the State of Maine generally, I repeat that I am unable to answer.

Q. How much would it cost in Boston or New York to re-plank the Alfaratta's bottom in the manner specified, in 1851, throughout, up to the water-line, when light?

A. It would cost, in Boston or New York, about 500 or 600 dollars.

Q. Have you the memorandum you made, as stated, with you?

A. I have a copy of them only; the original is in a book in my office.

Q. When did you examine the Alfaratta the 2d time?

A. In Sept., 1849.

Q. How did you then report her?

A. I think I did not alter her rate.

Q. At what wharf was the Alfaratta when you first examined her?

A. I don't recollect—have not the slightest recollection.

Q. Have you any recollection of the brig at all, as she was, independently of the memoranda?

A. I have a very slight recollection of the general appearance of the vessel, but nothing that can be confided in, except my memorandum.

Q. Had she a house on deck?

A. I don't recollect. The cost of an eastern-built vessel, fitted for sea, (of her description,) is about $45 per ton.

During the last three years I have not personally gone on board all vessels, but have had a deputy inspector to go on board all, but where a question arises *require* any personal inspection. I have no recollection of the Alfaretta and of her personal appearance, but without my memorandum I could not testify as to her;

my recollection of the vessel is still indistinct after looking at my memorandum.

I have no knowledge of the time when she was built, excepting what was derived from the information of others. As a general thing, my company does not insure vessels of this class, built at the eastward; sometimes we do.

Re-direct.

The rates I have mentioned govern the company, in the rate of premium to be charged for insurances; and I question whether they will insure at all. We insure A 1, A 2, freely, and A 2½ is considered extra hazardous, and an extra premium charged, and B we don't insure at all.

The record of survey is the guide in determining the question whether the company will insure, and at what rate; we refer to the record for the purpose of ascertaining the quality of the ship.

Re-cross.

Q. Have you any memorandum on the insurance books made prior to Oct., 1853, that the Alfaratter was wormed?

A. No, sir.

Q. Was her rate A 2 changed prior to Oct., 1853, on your books?

A. I think it was changed to A 2½ before Oct., 1853, but I have no memorandum as to when it was changed.

SAML. G. WARING.

Sworn before me, this 8th day of Nov., 1856.

JOHN G. VOSE, [L. S.]
Notary Public.

We consent that the above deposition be read in evidence upon the trial of this action, subject to all legal objection.

W. & D. T.
O. & V.

Endorsed: U. S. circuit court. Steamship Pacific ag. Otis P. Rumball. Deposition of Sam'l J. Waring.

OWEN & VOSE,
Claimant's Proctors.

Richard Poillon, being duly sworn, says: I am a shipwright in the city of New York; have been such for 15 years; my firm is C. & R. Poillon; the largest portion of our business is the repairing of vessels; I am in the habit of inspecting vessels, to ascertain valuation; I can, by examining a vessel, determine pretty near her value;

I have bought and sold vessels; am acquainted with what are called eastern-built vessels. I knew the Alfaretta when she was a schooner; she was an eastern-built vessel, built of what is called mixed timber, beech, birch, maple, &c.; I first became acquainted with her, I think, five years ago, but my distinct recollection of her dates back only to the time I repaired her in 1853; at that time we put new zinc in her bottom; there was zinc on her at that time, which we took off; we found her bottom worm-eaten considerable.

Q. Are you able to state how long she had been worm-eaten?

A. No, sir.

Q. Could she have been worm-eaten while the zinc was on, which you took off?

A. No, sir, not as long as the zinc remained on.

Q. About how much do such vessels *deternate* in value by age when kept in ordinary repair?

A. I should think about ten per cent. per annum.

Q. Do you mean that a vessel of this class, which originally cost say $7,000 to build, would depreciate 40 per cent. in value in four years?

A. I should judge so; it would depend upon circumstances; she might be coppered or zincked in the meantime, which would save her condition; it would also depend on the condition of her sails and rigging?

Q. Did the condition of the Alfaretta's bottom, at the time you speak of, indicate anything as to her *deteriaatn*?

A. It did; After the condition of the bottom was known, it made the vessel of less value than if it was not known, but at the same time it might not have affected the seaworthiness of the vessel.

Cross-exm'd.

It was in the early part of November, 1853, that I took the zinc off the Alfaretta in New York; I had seen the vessel along the wharves before, but till I took off the zinc, I never had examined her sufficiently to judge of her value; judging of the Alferatta, of what I saw of her when I took off the zinc, she cost to build, when new, about $8,000; we put new zinc on her, re-fastened the bottom, and strengthened her by putting stringers in the hold, and some bilge pieces, and re-treenailed her—the treenail is a wooden bolt—and some other small jobs; we did not re-plank her.

Q. When you completed the repairs you put in her, what condition was she in as to seaworthiness?

A. She was in good condition; when I speak of $8,000 as the cost of the vessel I do not include the cost of zincking her; when I speak of such a vessel depreciating 10 per cent. per annum, I assume that she has been neither coppered nor zincked; Mr. Pingree was one of the owners when I repaired her; when I say the vessel was worm-eaten I mean to say that her plank only were worm-eaten;

her timbers were not; the worm-eaten plank was not taken off; they were then sufficiently strong in their then condition to keep *them* vessel seaworthy; in repairing the vessel as we did, we thought we made a good job of her, and made her fit for sea; it would cost, I should judge, to new zinc the Alferetta about $700 (seven hundred dollars); I have often zincked vessels.

Re-direct.

Q. Does coppering or zincking a vessel make any difference in respect to her *deteriation*, except by preventing her bottom from becoming worm-eaten?

A. It adds to her first cost; it would not prevent the rate of *deteriation* I have mentioned, except by preventing her bottom from becoming worm-eaten; the cost of zincking or coppering would have to be added to her previous value.

Q. Would you then consider that the Alfaretta had depreciated at the same rate, inasmuch as she was worm-eaten? [Obj. to.]

A. I should judge so, at that rate, provided you exclude the cost of zincking her; the difference in rigging between a brig as she first was, and as schooner, as when I last saw her, would be about $500; brig rig would cost about that much more than schooner rig. In valuing her at $8,000 first cost, I valued her as brig rigged; assuming that the vessel was dismasted and stripped, it would cost $500 more, I should judge, to put in masts and spars, and rig her as a brig, than it would to fit her into a schooner, as when I saw her.

Re-direct.

Could the worms have got into her bottom while she had on the zinc which you took off?

A. No, sir; the rate of depreciation I mentioned would be greater if the bottom of the vessel were worm-eaten.

Q. Could the worms have eaten, as bad as she was, unless it had been done whilst her bottom was without zinc or copper?

A. No, sir.

Q. What was the Alfaretta worth after you had completed the repairs you put upon her in Nov'r, 1853?

A. The intrinsic value of the vessel was more than she would bring in the market; I think about $2,000 was spent in repairing the vessel; the vessel had been strained by heavy weather at sea.

RICH'D POILLON.

Sworn to before me the 28th Oct., 1856.

JAS. W. HALE,
Com'r of Deeds.

This deposition may be read in evidence before the commissioner, by either party, subject to all legal objections, except as to the manner of taking it.

N. Y., Oct. 28, 1856.

WEEKS & DE FOREST,
OWEN & VOSE.

Endorsed: U. S. circuit court. Steamship Pacific, &c., ads. Otis P. Rumball. Deposition of Rich'd Poillon, taken for clmts.

OWEN & VOSE,
Clmt's Proctors.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Robt. H. Felter, being duly sworn, says: I reside at Greenpoint; I am a ship carpenter; in the year 1851 I lived at Nyack, on the North river; I was then engaged in ship-building; I was there four years; I have bought and sold vessels, and am able to determine the value of a vessel, pretty nearly, by examining her; I know the brig Alfaratta; she was brought into New York after the collision with the Pacific, and I saw her at a wharf; I visited her for the purpose of examining her condition, and ascertaining her value and the probable cost of repairing her; I expected then to become interested in her, and I was particular in my examination on that account; the Alfaratta was an eastern-built vessel—that is, I was told so; she was towed up to Nyack after Morris & Bennett bought her, and I was employed by them to repair and refit her.

Q. Did you examine the vessel thoroughly while she was at Nyack?

A. Yes, sir, above her *extrt.* water mark.

Q. What, in your opinion, was the value of that business just prior to the collision? [Obj. to without proof that the witness had seen her prior to the collision.]

A. Allowing her to be in a sailing condition, I should think that she was worth $4,500.

Q. Do you think she was worth more?

A. No, I do not.

Q. Do you base this estimate upon the assumption that her bottom was sound?

A. I do.

Q. If, at that time, you had known that her bottom was badly worm-eaten, would that have made a difference in your valuation of her?

A. If I had known it, and went to buy her, I would consider that would make the difference of the price of a new bottom—that is, if her plank was not safe.

Q. How much would be the cost of a new bottom for her?

A. It would depend upon what kind of plank you put on her; I think her bottom was yellow pine, and to have put in a new bottom of yellow pine from her wales down, would have cost $750.

Q. In what state of repair did the Alfaratta appear to have been kept?

A. The sinking of her destroyed her appearance; it made her look muddy and fouled her up.

Q. Can you answer the question any more fully?

A. As regards the state of her paint, I cannot.

Q. Can you in regard to the appearance of her *wadnick?*

A. Well, no; she looked to be a working vessel, and showed nothing more than the wear and tear occasioned by loading and unloading, except the damage from being run down.

Cross-ex'd.

I saw the sch'r last in the spring of 1852.

Q. State about the cost of the schooner, to Bennett & Morris, after she was repaired, as far as you know?

[Obj. to and ques. withdrawn.]

ROBERT H. FELTER.

Subscribed and sworn to before me, this 6th day of Nov., A. D. 1856.

JOHN G. VOSE,
Notary Public.

We consent that the above deposition be read upon the trial of this action, subject to all legal objections.

W. & D. F.,
O. & V.

Deposition of Charles C. Freeman.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Charles C. Freeman, being duly sworn, says: I reside in the city of New York; I am a Sandy Hook pilot; have followed the sea since I was seven years old; I am now 37 years old.

Q. Are you well acquainted with the value of vessels?

A. I am well acquainted with the value of vessels if I go to buy one; I saw the brig Alfaretta when she was brought into this port, in 1851, before her lumber was out and afterwards.

Q. What was her condition, irrespective of the injuries she appeared to have received from the collision?

A. The vessel, I should judge, was seaworthy; some of her gear, that I saw, wanted splicing and refitting—the running rigging; I mean, by splicing, either new rigging or splicing.

Q. Did she appear to be in good repair?

A. She did not appear to be kept in as good repair as a packet-ship would be; she was muddy, but that I did not consider.

Q. What sort of vessel was she?

A. I should judge she was 160 tons; built of soft wood; eastern-built; timbers were sound; all the planking above the zinc was sound; don't know her age.

Q. What would a vessel of that class cost to build?

A. It might cost to build her first *out* $5,500.

Q. How much would such a vessel depreciate at four years of age?

A. We have got a standing rate what such vessels would depreciate; I should judge she would depreciate 25 or 30 per cent. yearly.

Q. How long do vessels of that class usually continue to be good and seaworthy?

A. From 5 to 6 years.

Q. Did you examine this vessel with any particular view?

A. I did; three friends of mine wanted to buy her if they could get her reasonable; I examined her and gave them my opinion; don't know what I said to them, but they bought her.

Q. What would that vessel have been worth before the collision?

A. Some one had fallen in with her and taken off her gear, I supposed, as her chain and *caller* were gone; knowing as much as I do now, I would not like to say what she was worth before the collision, because I put her down lower now than I would then.

Q. Why do you do that?

A. I do that by knowing she was worm-eaten; I did not know it then, nor until after she ran one voyage; the parties that bought her found it out, and they sold her; I thought at the time she was bought that she would have been worth before the collision $4,000; after I found out that her bottom was pierced, I would not have given $3,000 for her before the collision.

Cross-ex.

I first saw the vessel at Poillon's dock when she was brought in by the Nettle; I have brought in 5 or 6 vessels in difficulty; have brought in abandoned and dismasted vessels.

Q. What would be a fair compensation to the Nettle for bringing in the brig from sea off Fire island, assuming that she had been abandoned?

A. Fifty per cent. of what she brought; I formed this judgment from what I know of the condition of the vessel; she had no chains or anchors, masts or sails; she had some rigging and sails on deck, sold previous to her hull. I have never built a vessel at the eastward; have never superintended building a vessel at the eastward. I was a partner once in buying the pilot-boat Nettle, built in East

Boston; never was interested in a purchase of any other vessel built east of New York; I have been interested in three pilot-boats sailing out of New York; never owned in any other vessels excepting pilot-boats; have been a pilot about eleven or twelve years; before that I was a mariner; I was 2d mate of brig Clinton for two years before I became a pilot. I examined the brig very carefully before the sale at auction; I could not get into the hold because she was full of water; I went below under her deck; I went in the cabin and all round wherever I could get, and went round her outside in a boat. I examined her after lumber was discharged. The purchasers took her up to the North river, to repair her; I did not see her after that till she came down repaired; when they were fitting the rigging, I went on board of her then; did not then make any examination of her; I saw her the next time about three months after. Before she went up the North river to be repaired, I did not see any worm-holes in her; her zinc was new, so new that the nail-heads were bright; anybody can tell new zinc from old; I did not see any worm-holes in her before she went on her first voyage, neither did I afterwards; I only know what I was told by her owners, and they got clear of her as soon as they could; I only know this from what they told me—no other way; I never bought or sold vessels excepting the pilot-boats of which I have spoken; I have had repairs done to vessels, but never to any other vessels than the pilot-boats of which I have spoken, except I paid the repairs to a schooner with which I had collision. When I say that a vessel would depreciate from 25 to 30 per cent. per annum, I do not mean she would be worth nothing at the end of four years; I mean that she would at the end of three years after she was built be worth only ¼ of what she originally cost. It might be somebody would buy her for a coal barge, for all that I know; I do not mean to say that this would be so without reference to the repairs which were put upon her. This depreciation would not take place if the vessel was kept in repair—I mean thorough repair; but it is not likely that anybody would do that, but only keep her in running order so as to knock round and make money for her owners. I mean to say that an eastern-built vessel of her class—I mean her tonnage—will not at the end of six years be insured; when I say that such a vessel would not be seaworthy after 5 or 6 years, I mean they would not be insured. I have never applied for or effected an insurance on any vessel excepting my pilot-boat.

Cross.

Q. What was the condition of the brig, sails and rigging which you say was lying on her deck, and was sold?

The sails were fit for paper, or the junk-shop, what I saw sold; the rigging I suppose they made oakum of; it was not fit to go on another vessel—I mean both the sails and rigging.

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Q. In regard to salvage, have you not an invariable rule?

A. We have a rule that we try to work to, and if we can't get it we compromise.

Q. What is that rule?

A. The rule is 50 per cent., whenever we can get it, and we generally do.

Cross Q. Was the vessel pretty well stripped when you first saw her?

A. Yes, she looked as though somebody had been there and plundered everything they could; or if some vessel had boarded her at sea and plundered her.

CHAS. C. FREEMAN.

Sworn to before me this 23d day of Oct., 1856.

JAS. W. HALE,
Com. of Deeds.

This deposition may be read in evidence by either party before the commissioner, subject to all legal obj., except as to the manner of taking it.

N. Y., Oct., 23, 1856.

WEEKS & DE FORREST.
OWEN & VOSE.

Endorsed: U. S. circuit court. St'ship Pacific ads. Otis P. Rumball. Dep. of Chas. C. Freeman for claimants.

OWEN & VOSE,
Cl'mt's Proct.

Filed Nov. 21, 1856.

Circuit Court of the United States for the south. dist. of New York.

Commissioner's Report.

OTIS P. RUMBALL, Lib'lnt and App'lnt,
vs.
THE STEAMSHIP PACIFIC, her tackle, &c.

In pursuance of a decretal order, made in the above entitled cause, on the 30th day of September, in the year of our Lord one thousand eight hundred and fifty-six, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for the damage by him sustained by reason of the collision, in the pleadings mentioned, and to report thereon to this court with all convenient speed:

I, Richard E. Stilwell, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellant and for the claimants, and have taken and examined the testimony offered in support of the libellant's claim, and *due* find that there is due to the libellant for the damage by him sustained, by reason of the collision in the pleadings mentioned, the sum of seven thousand one hundred and seven dollars and nineteen cents. Dated the 21st day of Nov., A. D. 1856. All which is respectfully submitted.

R. E. STILWELL,
U. S. Com'r.
WEEKS & DE FORREST,
Proct. for Lib'lnt.

Endorsed: U. S. circuit court for the south. dist. of New York. Otis P. Rumball, lib'lnt and app'lnt, vs. The Steamship Pacific, her tackle, &c.

WEEKS & DE FORREST,
Proct. for Lib'lnt.

Commissioner's report.
Filed 21st Nov., 1856.

U. S. Circuit Court.

THE STEAMSHIP PACIFIC, &c., THE NEW YORK AND LIVERPOOL U. S. M. S. S. Co., Clm'ts and Appellees,
ads.
OTIS P. RUMBALL, Lib'lnt and App'lnt.

The claimant and appellee in the above action hereby except to the report of Richard E. Stilwell, esq., U. S. commissioner, for that—

First. The said commissioner should have allowed to the libellant only the actual amount of damage occasioned by the collision.

Second. The said commissioner should have reported that the brig Alfaratta was worth, at the time of the collision, only the sum of $3,000.

New York, Nov. 25, 1856.

E. H. OWEN,
Proct. for Cl't and Appellee.

Endorsed: U. S. circuit court. The Steamship Pacific, &c., ads. Otis P. Rumball. Claimant's exceptions to Com's report.

E. H. OWEN,
Cl't's Proctor.

Filed Nov'r 26, 1856.

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven: Present, the Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

OTIS P. RUMBALL, Liblnt. and Applnt.,
vs.
THE STEAMSHIP PACIFIC, her tackle, &c.,
THE NEW YORK AND LIVERPOOL U. S. MAIL
STEAMSHIP CO., Clmts. and Appellees.

On reading and filing the report of R. E. Stilwell, U. S. commissioner, to whom the above matter was referred, by which there is reported due the libellant and appellant the sum thousand one hundred and seven $\frac{19}{100}$ dollars, and on reading and filing the exceptions taken by the claimants and appellees to the said report, and after hearing the said exceptions, on motion of Weeks and De Forest, proctors for the libellant and appellant, it is ordered that the report be in all things confirmed, and that the libellant recover in this action against the respondent the amount reported due, together with his costs in this and the district court to be taxed.

And on like motion, it is further ordered that a summary judgment be and the same is hereby entered against the said the steamship Pacific, her engine, &c., and the New York and Liverpool United States Mail Steamship Company, for the sum of seven thousand one hundred and seven $\frac{16}{100}$ dollars, the amount reported due, together with the sum of four hundred and twelve $\frac{82}{100}$ dollars, the taxed costs, amounting in the whole to the sum of seven thousand and five hundred and nineteen $\frac{61}{100}$ dollars, and that the libellant have execution thereon to satisfy this decree.

WEEKS & DE FOREST,
Proct. for Libl'nt.

Supreme Court of the United States.

THE STEAMSHIP PACIFIC, her machinery, tackle, apparel, &c., THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP COMPANY, Claimants and Appellees,
vs.
OTIS P. RUMBALL, Libl'nt and Resp'dt.

To the honorable the Supreme Court of the United States:

The appeal of the New York and Liverpool United States Mail Steamship Company, the above named claimants and appellants, respectfully showeth, that on or about the 24th day of September, 1851, the above named Otis P. Rumball filed his libel in the district court of the United States for the southern district of New

York, against the steamship Pacific, her machinery, tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the brig "Alfaretta;" that the process against the said steamship having been received, your petitioners, on or about the 15th day of October, 1851, filed their claim and answer to the said libel, and the said libellant replied thereto; and such proceedings were had in the said cause, that on the 11th day of November, 1853, a final decree was made and pronounced therein by the said district court, whereby it was in substance adjudged that the said libel in this cause be dismissed, without costs to either party; and that after such final decree the said libellant duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, and on the 15th day of April, 1857, the said circuit court made a final decree on the said cause, whereby it was decreed that the said decree of the district court be reversed, and that the libellant recover against the steamship Pacific the sum of $\$7{,}107\ \frac{14}{100}$, with his costs, in the said district and circuit courts, amounting in all to the sum of $7,519 61, and that the libellant have execution therefor; that said decree of the circuit court *in*, as these appellants are *devised*, erroneous, and ought to be reversed.

Wherefore, these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, April 16, 1857.

E. H. OWEN,
Appellee's Proctor.

Circuit Court of the United States, southern district of New York, in the second circuit.

THE STEAMSHIP PACIFIC, her tackle, &c., THE NEW YORK AND LIVERPOOL UNITED STATES MAIL STEAMSHIP CO., Claim'ts and Applts.,
vs.
OTIS P. RUMBALL, Lib'lnt and Appellee.

Know all men by these presents, that we, Edward K. Collins

and James Brown, of the city of New York, are held and firmly bound unto the above named Otis P. Rumball in the sum of fifteen thousand and five hundred dollars, to be paid to the said libellant and appellee; for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern dist. of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EDWARD K. COLLINS,
JAS. BROWN.

Sealed, delivered and taken, and acknowledged this 3d day of July, 1857, as to E. K. Collins, and on the 16th Oct., 1857, as to Jas. Brown, before me.

CHAS. W. NEWTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
South district of New York, ss.

Edward K. Collins and James Brown, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of fifteen thousand and five hundred dollars, over and above all his just debts and liabilities.

EDW'D K. COLLINS,
JAS. BROWN.

Sworn to this 3d day of July, 1857, by E. K. Collins, and on 10th Oct., 1857, by Jas. Brown, before me.

C. W. NEWTON, *U. S. Com.*

I approve of the within sureties, as sufficient security for the amount of the within bond.

SAM. R. BETTS.

Oct. 17, 1857.

Endorsed: U. S. circuit court. The steamship Pacific, &c., ads. Otis P. Rumball. Bond on appeal to the Supreme Court. Owen and Vose, applnt. proct'r. Filed Oct. 17, 1857.

By the honorable Samuel R. Betts, one of the judges of the Circuit Court of the United States for the southern district of New York, in the second circuit.

To Otis P. Rumball.

Whereas the steamship "Pacific," her tackle, &c., the New York and Liverpool United States Mail Steamship Company, claimants and appellants, have lately appealed to the Supreme Court of the United States from a decree rendered by the circuit court of the United States for the southern district of New York, in the second circuit, and the order founded thereon, directing the payment by the appellant of the damages, &c., costs exceeding the sum of two thousand dollars, exclusive of costs decreed to have been sustained by you in a suit wherein you are the libellant, and the said steamship Pacific, her tackle, &c., the New York and Liverpool United States Mail Steamship Company are the claimants and respondents, for an alleged collision, mentioned in the pleadings; and the said steamship Pacific, the New York and Liverpool United States Mail Steamship Company, claimants, have filed the security required by law, upon their said appeal:

You are, therefore, cited to appear before the Supreme Court of the United States, at the city of Washington, on the first Monday of December next, and show cause, if any there be, why the decree and order named in the aforesaid appeal should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 17th day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

SAM'L R. BETTS.

Southern District of New York, *ss.*

Joseph H. Gray, being duly sworn, says that he did, on the 19th day of October, 1857, serve the foregoing citation on Weeks and De Forest, esqs., proctors for Otis P. Rumball, therein named, and who, as deponent is informed and believes, does not reside within this district, or within 100 miles therefrom, by delivering a copy of said citation to and leaving the same with Henry G. De Forest, esq., one of said proctors, personally, at their office, at No. 52 Wall st., in the city of New York.

JOSEPH H. GRAY.

Subscribed and sworn to before me, this 19th day of Oct., 1857.
R. E. STILWELL, *U. S. Com'r.*

Endorsed: U. S. Supreme Court. The Steamship "Pacific," &c., applnt., vs. Otis P. Rumball, resp'dt. "Citation."
E. H. OWEN,
Appellee's Proct.

Filed Oct. 17, 1857.

Filed 31st Nov., 1857.